Fatarrison,

THE

L A W

EVIDENCE:

WHEREIN

All the CASES that have yet been printed in any of our Law Books or Trials, and that in any wife relate to Points of Evidence, are collected and methodically digested under their proper Heads:

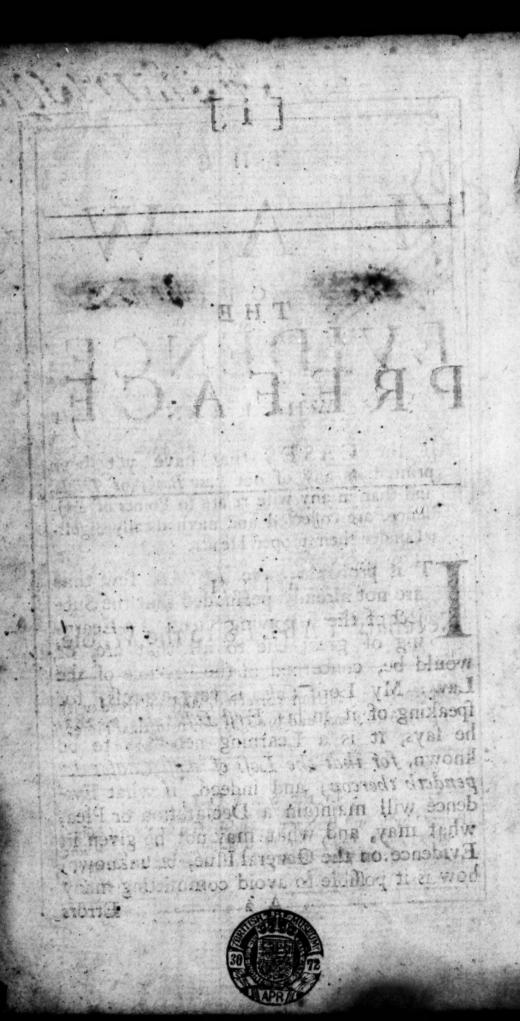
WITH

Necessary TABLES to the Whole.

The Second Coition corrected, and enlarged with many Additions, and brought down to this Time.

In the SAVOY:

Printed by E. and R. Nurt, and R. Gosling, (Affigns of E. Sajer, Eig;) for B. Folling, at the Crown and Mitre against Fetter-Lane in Fleet Street. M Dec xxxy.



inne tri laritte valutoinia est en a adito ilura sinva l'est est est est en a - I van a est batilizza indication e

one with the second of the free end

enall sted and except the board and I visa about the contract of the contract

diese being appling of this Nation example.

down half daily feath to be wishalf working the

PREFACE

old to object and an inverse visingflood little

proke, whence he made his Collections, in

Legarithmes ninwarranted by the Botter them-

T is probable there are very few that are not already perfuaded that the Subject of the following Sheets is a Learning of great Use to all that are, or would be, concerned in the Practice of the Law: My Lord Coke is very express; for speaking of it in his First Institute; p. 2831 he fays, it is a Learning necessary to be known, for that the Loss of most Causes dependeth thereon; and indeed, if what Evidence will maintain a Declaration or Pleas what may, and what may not be given in Evidence on the General Issue, be unknown; how is it possible to avoid committing many A 2 Errors

Errors in the profecuting defending and trying Caufes? On the Circuit most other Points of Law being remitted to a more folemn Determination in the Courts of Westminster-Hall; a Collection of this Nature does not only feem to be ufeful, but also the only Thing necessary; it was for these Reafons that the enfuing Collection was made, there being nothing of this Nature extant befides the 11th Chapter of a Book entituled, Trials per Pais, which is very defective, there being many Books published fince, and a great Number of good Cafes then in print omitted; besides the Author of that Book hath constantly given us the Sense of the Books, whence he made his Collections, in his own Words, which are often obscure, and fometimes unwarranted by the Books themfelves, and he always conceals the Names of the Reports where the Cafes are extant, which are Authority, and furely none think that Author's Book to be fo; then the Method is very confused, and many Cases are twice printed in different Places, nay fome three Times.

After what hath been faid of that Book, no Doubt the Reader will expect some Account of the Method that hath been observed in the ensuing Sheets, which is as follows: First, The Cases out of the English Books are set down in the very Words



of the Books; those out of the French are for Conformity take translated verbally ! It was thought convenient to preferve the very Words of the Book, first, because my Lord Bacon, speaking of a Recompilement of our Laws, fays, The Words of the Authors and Books of Authority ought as much as possible to be preserved. 2dly, As was faid before, it being supposed this Book might be of Use on the Circuit, where a Study of Books can never be at Hand, the Cases here printed, being in the very Words of the feveral Books whence they are cited, they are of the same Authority as the Books themselves, which an Abridgment of them could not be; therefore a Case or Two, which were abridged, are printed in the Italian Character, that they might be distinguished by the Reader, who, it is hoped, will excuse the Poorness and Obscurity of the Expression, which is obvious in the Quotations out of Clayton's, Keble's, and some other Reports, which was fuffered for his Sake, because that was thought more for his Service, than to leave him in Doubt, whether the Callector, by mending the English, had not corrupted the Sense: Besides, why should the Reader be more offended with Barbarisms here, than in the Books themselves? When Cases occur'd in A 3 our

our Books which contradict one another, or are not Law, both which happen'd sometimes, they are however printed here, that the Reader may use his own Judgment.

It is a common Thing to find the same Case reported in several Books, sometimes with the Resolution of the same Point, sometimes without; this the Reader will find denoted by S. C. for the same Case; and when the same Point does not occur, he will find S. C. n. S. P. which he'll read the Same Case, not the Same Point.

If the same Point be resolved in several Cases, than which nothing is more frequent, that the Book might answer its Title, and at one View shew the Reader all the Refolutions that are extant in our Books on Points of Evidence; that Case is here printed which was judged to be beft, and References added to the other Books in which the same Point is resolved; so that the Reader will understand that he hath the Words of the Books first cited, and the Sense of those that follow only in four or five Cases; the Point being clear, and the Authorities that might be added being extreamly numerous, fome have been omitted, and then the Quotations conclude always with an Gc.

No one with Reason can assert, that a Collection out of almost a hundred Books, and about a thousand Cases shall be exempt from Defects; all the Collector desires is, that if no Title of the Law (and Collections have been published on almost all) has been treated with more Care, or greater Exactness, he may escape Censure; and if any has, he claims no Favour.

reged Avin . And the Project does not occurs

et in Breake's Abridgment of more fire-

Brownley & Sports - The Carlet

Replocas Teperts. Torded in Several

is the other was the or

The Holland State of the State

Doll II

the Same Cike not the Same Rocks.

Contro Date Caster's Remores

Carting will and of ath's Reports

Con Line Sign Believe of Control of the

treamly to in the Que atrons conclude

Cond. Res. Camber & Repairs, 10, other Books Chy. Well of Chytav's Paparis, relabled , to that 1, 2, the Col. Che's Repairs and a chilf dechat

The

CI

The NAMES of the AUTHORS that are cited in the following Book, with such Abbreviations as are used for their Names.

Configuration of the Configura

Al. for Aleyn's Reports.

1, 2 And. Anderson's Reports, 1st, 2d Part.

B.

Ben. Benloe's Reports.

Bro. A. Brooke's Abridgment.

1, 2 Bro. Brownlow's Reports, 1st, 2d Part.

1, 2, 3 Bul. Bulftrode's Reports, 1st, 2d, 3d Part.

C

Carter's Reports. Cart. Cartb. Carthew's Reports. Clayton's Reports. Clay. 1, 2, 8c. Co. Coke's Reports, 1ft, 2d, &c. Part. Sir Edward Coke's Commentary up-Co. Lit. on Littleton. First, 2d and 3d Vol. of Croke's Re-1, 2, 3 Cro. ports; and Note, That is here called the first Vol. which is first in Time, and so of the 2d, and

Refunce a Reports

Cumb. Cumberbach's Reports.

D.

Dal.) for Dalison's Reports AMA 911

Davis's Reports.

Dy. Dyer's Reports of the last Edition,

270 URIVO with new Cafes in the Margin.

Lare used for their Names

Far. Farresley's Reports.

Fitz. Fitzberbert's Abridgment. Fitzgib. Fitzgibbon's Reports.

G

God. Godbolt's Reports.

Golds. Goldsborough's Reports.

H.

Har. Hardress's Reports.

Het. Hetley's Reports.

Hob. Hobart's Reports.

Hut. Hutton's Reports.

I.

T. Jon. Sir Thomas Jones's Reports. W. Jon. Sir William Jones's Reports. 2, 3, 4 Inst. 2d, 3d, 4th Institute.

K

1, 2, 3 Keb: Keeble's Reports, 1st, 2d, 3d Part. Kel. Keihway's Reports.

Kelynge. Kelynge's Reports.

L. La.

L.

La. for Latch's Reports.

1,2,3,4 Lean. Leonard's Reports, 1st, 2d, 3d, 4th
Part.

1, 2, 3 Lev. Levinz's Reports, 1st, 2d, 3d Part.
Lit. Littleton's Reports.
Lutwich's Reports.

M.

Mar.

March's Reports.

1, 2, 3, &c. Modern Reports, 1st, 2d, 3d, &c.

Part.

Moo.

Moor's Reports.

6, 7 M. C. Modern Cases, 6th, and 7th Part.

N.

No. Noy's Reports.

0.

Ow. Owen's Reports.

P.

Pal. Palmer's Reports.

Pl. Plowden's Commentaries.

R.

Ray. Raymond's Reports.

1, 2, Rol. Ab. Rolle's Abridgment, 1st, 2d Part.

1, 2 Rol. Rep. Rolle's Reports, 1st, 2d Part.

S. Sav.

Š.

Sav. for 1, 2, 3 Salk. 1, 2 Show. Sty. 1, 2 Sid. Skin.

St. Tri.

for Savil's Reports.

alk. Salkeld's Reports, 1st, 2d, 3d Part.

Shower's Reports, 1st, and 2d Part.

Style's Reports.

Siderfin's Reports, 1st, 2d Part.

Skinner's Reports.

State Trials.

vanues of the Ministr

T.

T. per pais Trials per pais.

Mothor certal Chart

Vau.

Vaughan's Reports.
Ventris's Reports, 1st, 2d Part.

The Meleni and Suni

W.

Win.

Arden

Winch's Reports.

Y.

Tel. Telverton's Reports.
The Year Books.
Several printed Trials.

ATA Peircy fold's Reports

Andelton Repositolle's Repo

A Boundary of A

OF THE

Names of the Principal Cases.

A.

	There we lead
A Boot versus Chapman	Page 168
Adams and Guife	238
Adams and Man	214
Agar versus Lifle	183
	THE RESERVE THE PROPERTY
Aldbrook's Cafe	115
Allen and Abraham	270
Allen and Chapman	185
Allen and Sprigwell	196
Altman versus	274
Anonymus, 4, 5, 16, 29, 30, 38, 43, 49	THE RESERVE AND THE RESERVE AND THE PERSON AND THE
63, 66, 80, 82, 83, 88 95, 103, 10	THE RESERVE OF THE PROPERTY OF
114, 115, 119, 120, 128, 140, 165	
172, 174, 178, 191, 203, 205, 206	, 207, 208,
213, 215, 217, 218, 219, 220, 227	, 230, 232,
233, 237, 241, 254, 267, 273, 274	
versus Brown & alios	116
versus Corporation of London	with the ten Head
versus Corporation of London	NUMBER OF THE PARTY OF THE PART
versus Kelley	nofilibrari 30
and Peircy	118
versus Read and Clay	207
Anderson's Case	225
Arbuyh versus Collison	216
To the control of the	Arden
A STATE OF THE PARTY OF THE PAR	2214011

Names of the Principal Cases.

Arden versus Goad	Page 134
Argoll versus Cheney	111111111111111111111111111111111111111
Ascue versus Sanderson	68100 and Peers
Ashburnham and Young	202 kham's C fe
Atkins versus Hale	Figh well vering Ayre
Atkinfon and Champion	88 well very Slegin
Audley (Lord) bis Cafe	The sheld volfate March
Ayre and Blackwell	The vertis Page
entre barren des Perer en	Bland verfus Hallerin
dor com any sendent B.	Bland verins Tenant
Backwell and Litcot	10 90 900 142
Baines's Cafe	Zirwer ver his Ketchin
Baker and Cook	80mt verfus Ward
Banker's Cafe	26cknam and Rex
Baraclough's Cafe	812n and Jones
Barber and Cafe	80 in gela Fitzbarris
Barstoe versus Anderson	denoil which no 201
Bafpole's Cafe	egid verfus Green
	Sprado A antro bays
	olnishel uslave di 243
Bath (Earl of) versus Batt	
Bath (Earl of) and Pride	
Bawldwin verfus Cole	68 riles tiegins Broadne
Baxter and Cramfield verfu	
Bayly and Gatford Beal and Taylor	Lie with molecules
Bean and Jones	oxide the second
Beckford versus Clark	bis // 10 15 1 167
Bedford and Cope	Ruan verfier Trumste
Beckwith versus Elsey	184 grave and Snelgar
Beckrow's Cafe	100 do 100
Bell and Howard	70 66 No. 66
Bennus versus Guyldley	(10.1)
Barnardiston and Miles	2 3 mw112
Berry's Cafe	1 231
Berry versus Wheeler	262
Betsworth versus Betsworth	34014
Peblok	Birch

Named of BART A. Mafes

	P THE STATE OF THE PARTY OF THE
Birch versus Wilson	happin Page 148
Bird versus Bird	Lennt verfus Eurehale
Bishop and Peers	nolphol whom grow 209
Blackham's Cafe	istin vacher dajet oung
Blackwell versus Ayres	grinna V han a mi 173
Bladwell versus Slegin	diwingly of the 201
Blainfield versus March	44r#sha 1 Cole no Cole
Blake versus Page	bill a sayou derorgo
Bland versus Hallerig	enished whose decentify
Bland versus Tenant	661 ough wis Sanders 1
Blesby's Cafe	total lage lite :
Blower versus Ketchmen	e aromali talvar Halmore s
Blunt versus Ward) 140 ha 1240
Bocknam and Rex	13 1 1 1 1 287
Bean and Jones	end in internal way
Bojun and Fitzharris	errier and Cares
Bolton versus Thompson	noltung A. michanisti 229
Bond versus Green	215
Bond versus Richardson	10 in 11 212
Booth versus Jenkinson	specific ame Sipport
Boothby and Lee	the saves (to manipline
Bourcher and Derby	Darl has (to lead out 162
Bowles versus Broadhead	l olo) rated martiles
Bray and King	671 cen kad Cemfield co
Bredon versus Gill	protection 7126
Brents versus Mico	mate mount notanta 96
Brett versus Brett	1 10 1 1600 July 2
Brett versus Ward	fortimen very Chies
Brian versus Trundle Brograve and Snelgar	forknock's Eak!
Brooks versus Smith	dambiola in isw sore
Brooks and Harding	Logi Arius Van 236
Brounker (Lord) versus	
Brown's Case	Strong ver/as bailing
Brown versus Crashaw	Senicheften and Philips
Brown versus Brokes	Adechefter (Billiant's and
Brown versus Hodges	Walld's Ocherly Berken
MARK	Brown
	- Court

Names of the Principal Cases.

Tennon of Games T	
Brown and Moor	nolliW wiPage 196
Brown versus Purchase	Breek versus Bird -
Browning versus Johnson	Thop and Peers
Brumwiche's Cafe	Terckham's Gafe pencer
Bucknal and Manning	Ste well ver he byres
Bukefast versus Horwill	minal west was floring
Burgeffe's Cafe	resented vertet which
Burleigh versus Child	See parate land
Burrough versus Perkins	dend verfit thateng
Burrough and Sanders	streng werfut Leusnig
Bushell' Cafe	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
Bushell versus Pasmore	come work and they are
아니아 아이들이 하다면 아이는 아이는 얼마나 나는 얼마나 되는 것이 없는데 얼마나 아니다.	Chant weeks the store
Cage and Harrison	ers a divina case a 173
Caly verfus Fisher	rosen and haker
Carter and Davis	Secure wild Hobeltains
Carter and Dorfett	Managed Transported
Carter and Kemp	gold: Wilself M237
Case versus Barber	801 Ment Menn State
Castle and Trowell	SELEG VINE Bedford
Caftlemain & Rex	sectional west (sure to
Catline versus Pidgeon	Tevre bere belas Decoe
Celier and Rex	opieticeri 63 Reging
Chalkill aud Eden	September being
Chamberlain versus Stant	
Champion versus Atkinso	n gaiggo Talaista 80
Chapman and Abbot	Sound ships fords
Chapman versus Allen	mode tow mass
Chapman and Regina	opword but with
Charnock's Cafe	The world Lavadge 280
Chase versus Holdwich	1 1 2 2 207 207
Cheney and Argoll	as a middle of
Cheny versus Haws	till Foreignal L. Marinia 67
Cheny versus Smith	V1010 1916 + 194259
Chichester and Phillips	Warhald Mayor Tayonasa
Chichester (Bishop) and	Strodwick 237
Child's Cafe	OFTER MER SHOWOURS.
Thrown	Child

ATABLE of the

	, ,,,,
Child and Burleigh	Page 254
Clark and Beckford	100M Page 254
Clark and Isaac	ECHIEC LANGE PRESERVE
Clayton versus Spencer	\$ 00 a maiotama13
Cleaveland & Rex	Iningeld bus lenaun6
Cole and Balawin	bereits caylar Horwill
Cole versus Delawn	\$\O : 6 Dag220
Collet and Whitaker	oppleigh crofus Child
Collins and Oliver	retaro I ragno 0,00°255
Collison and Arbough	A STATE OF THE PROPERTY OF THE
Combs versus Mayo	6 O Hari 34
Combe versus Cheny	88 pell sugar Palmore
Combs and Fryer	141
Constable's Case	nohmali hus 2196
Cook versus Baker	86 y carfes Fifner
Cook and Fountain	48rter ned Davis
Cook versus Thomas	Afrec and Dorlett
Cook and Violet	qual has 12221
Coomes versus Denn	70018E 101177 142
Cope versus Bedford	lis wor'T has although
Corporation of London	60 Hemain & Rex
Corridon versus Devoe	retine cords Pidgeon
Cotefworth & Regina	237
Coulter and Ireland	nibil tan lidia16
Covert versus Lennard	662 mberlain verfür Stan
Cox versus Copping	dmith weve noton139
Cragg versus Norfolk Crane and Dean	toddA but, namq102
	nella universitation 176
Crashaw and Brown	egopman and Region 481 mork's Cafe
Croply and Reve	dawblold agree slage
Crosby & Rex Cross and Gay	Hogy A May you 199
Cross and Matthews	197 1981 1 1 1 1 2 1 2 1 2 1 2 1 2 1 2 1 2 1 2
	dinta 20135
Crouch versus Drury Crowdall and Millner	eathetter and Phillips
Cutts versus Pickering	has (quilit) rafiada 83
Cuttler and Snow	100 c'aligo
M.O I	D. Dalfon
• • • • • • • • • • • • • • • • • • • •	D. Danon

Names of the Principal Cases:

	The second second second second
Dalson versus Moulin	Page 275
Danges and Pateson	S The Hard States # 276
Danvers and Rogers	218
Darby verfus Bourcher	oods 'ser' has 162
Davenant and Tapper	163 miles 163
Davis versus Carter	48 A Chief and Lenis
Davis and Haywood	232
Davis and Stanison	Tor see Beckwith
Dauler and Knight	vorid and rolling
Dawson and Walker	225
Dawbie's Cafe	12 TAO bas need 15 120
Dawson and Rex	43
Dealton and Tarling	tore very
Dean versus Crane	176
Dean versus Harrington	254
Dean and Mildmay	133, 235
Death and Gold	Cital A way A teath
Delawn and Cole	220
Denne and Coomes	142
Dennis versus St. John	I has slott be 207
Demy versus Norris	167
Devoe versus Coridon	191
Diersly versus Nevil	228
Digby (Lord) and Earl of	of Shafisbury 17
Dixon and Lindsey	269
Dod versus Monger	198
Dorset versus Carter	and Crelinand with the for
Dowdal's Cafe	
Dowman's Case	populates and Cookes
Downs and Gounton	and a second of the second sec
Down versus Shumshee	one to search and 3243
Downs versus Skrimshaw	\$45, 246
Draper versus Gapper	257
Drury and Crouch	The Parish Contract Cook
bps/Amri	Drusy

ATABLE of the

Drury and Woller	Page 182
Dune and Territ	Malk verfus Walk
E.	Frankwel & Rex
Eden versus Chalkill	Tildell I haz den 19
Edwards versus Thompson	Relation Colon
Edwards and Treil	Committee of the commit
Eggleston versus Speke	111 court and Yatger
Eggleston and Kenrig	
Elliot'Cafe	18 10 from year 193
Elfey and Beckwith:	184 diner verhier
Emerson and Kirby	15 the control of the little
- C 11 C 77:11	68
Exeter (Dean and Chapter	of) versus Trewinard 5
Evans versus Herbert	Ext ford over fis B.
Evans and Petty	they han onant
	and the second of the second o
0.00	Charles marild principle
Farmingham and Hewet	Kamplika, benga 178
Farthing and Vicary	214 m lion 1 239
Farrington versus Lee	2012 han are 301
Feild & Rex	and the total history
Fenwick and Holt and Jac	KION CONCERN CONTRACTOR
Fezas	Trovis Aldre 6155
Fine's Case	free to the history
Fisher and Caly	Carry Descript
Fits versus Freestone	THE REPORT OF THE PARTY
Fitzherbert versus Hind	de valuation and 221
Pitzharris versus Bojun	The small perfile Core
Fitz versus Smallbrook	the later per between
Ford versus Gray	10111 1039 1100
Fortescue and Coakes	the very all was
Foster versus Fountain	2011/19 W 20 150 15 268
Total and Trice	months With the 12 400
Foster and Regent Foy versus Lister	Buord walter in 135
Fountain mentus Cook	Sten and Bondapper
Fountain versus Cook	Frankland
Action to	1 I gilla latiu

Names of the Principal Cases:

Territory of the T	Turoupur Gajes.
Prankland verfus Savil	LITTER OF SHEAR OF SHEAR
Prankland versus Walker	to I list of his Sugar
Frankwel & Rex	
	4 14E
French and Tilford	Theness there are the committee
Fryer versus Combe	amiga Law exa abana
Fuller and Fotch	126
	La arte by an nothing by
Gallaway versus Susach	10 may 10 mg 169
Gapper versus Draper	bus 1 2010 227
Gardiner versus Norman	266
Garret versus Lister	ROTATION RELIGION
Garron and Ladd	and the same of th
Garth versus Mois	SOUND STANDARD STANDARD
Gatford versus Bayly	The start Addition of the state
Gawdy and Vast	and the second of Baa
Gay versus Cross	ino reverse
George versus Peirce	8 mins / Cite
Gerrard and Stephens	as found or though the little
Gery versus Hopkins	AND THE PARTY OF T
Gilbert and Seaton	THE WALL AND ADDRESS OF THE PARTY OF THE PAR
Girlington versus Pitfield	A COOR I VINTER YOUR COOR
Gladell's Case	- Boow ALL Supplement
Goad and Arden	nest, when notgon 134
	dlaw I tagyr d to 182
Goddard versus Smith Gold versus Death	Silver, and Chiney
	- Carlotte and Control of the Land of the
Gold and M. and Com. of	London
Goodier versus Smith	THOUGH IN THE PROPERTY AND THE PROPERTY
Goodwin versus Welch and	Over
Gore and Hicks	ectrofoucavia Capakes
Goulston versus Downs	715
Gower versus Wilkinson	the profit and 173
Gary and Wilson	
Green versus Proud	
Green and Bond	denimalità la
Gregory versus Hill	200 21 15 4 14 1243
a 2	Greve

ATABLE of the

Greve and Grathook very	us Turnftall Page 65
Grey (Lord) and Ford	Distinct Total 170
Grigg's Cafe	SALL CAR CRECOLA
Griffin versus Stanhope	send and bitzher best.
Gubbon and Stone	dangen verius kam
Guildley and Bennus	The Land north
Guilliams & Ux. versus I	Julie & Ux. X20211118
Guife versus Adams	areate and society
Guilford versus Gainsford	a dirowing
Guy. versus Rand	PERCENTION OF HOLDING
Th.	Mole (Doctor) within
Hale and Atkins	ASEDRIUS DELIES -
Hamond versus Taylor	1 DJ 1 DOOW 1 48
Hambden's Trial	AND SHOWEN
Hamson and Pettywere	Constituted & Valling
Hankeys and Jennings	daoner aug Ospura
Hargave's Cafe	had there binwing.
Harning's Cafe	Minoral veries in the
Harding verfus Brooks	226 May 13 236
Hardy and Marlain	Soomphile all a sort
Hardcastle versus Lockwo	nod: 244.
Harrifon verfus Cage	Dioing In Dioing
Harris and Manwood	80 September 19 19 19 19 19 19 19 19 19 19 19 19 19
Harrington versus Dean	2006 20 130 (311274.
Harwich verfus Twells	of unchang and heart,
Haws and Cheney	E 167
Haslerig and Bland.	
Hayens versus Rogers	Mali kan da 177
Haywood and Nichols	4 4 4 00 2 ANA GOLA 200
Haywood verfus Davis	23. 580 13.1242.
Hebden and Rutter	SOULA EDITAL YEAR.
Hems versus Stroud-	1262.
Herbert versus Evans	spirit Caral
Herbert versus Tuckall	Thronin vering Lacas
Hern versus Nichols	TOOL AND MOININES
Hewer versus Farmingham	Start inton octing Louis
Haydon versus Ibgrave	Ansai 20/190 230451256
	Hicks

Names of the Principal Cases.

	is a thinki bar Cales.
Hicks ver sus Gore	Transaction of the Page 76
Hill and Enfield	Ford) and Ford
Hill and Gregory	127 200273
Hind and Fitzherbe	at scionas when an 221
Hingen versus Pain	1221 Miles 1100 1221
Hinton and Lentha	
Hitchcock and Smit	Los Linguis & Ux occiler 1 Land
Hodges and Brown	245 The work. A cams
Holdsworth's Case	. brotenie deries Cainstord.
Holdwich versus Ch	afe . 207
Holt (Doctor) versu	s Strode 107
Hopkins versus Gery	
Horwood's Case	286
Horwill and Buckfal	
Hornsey's Inhabitan	
Hosier and Osburn	206
Howard versus Bell	
Howard versus Tren	
Huet and Overies	The state of the s
Humphries and Pay	ton 65
Hundred of Walling	
Hungerford and Spea	ak 252
Hunson and Minors	Dogwood 4 Ave. 229
Hussey versus Jacob	made San narming 445
Hutchins and Stamp	215
767	To the second
	the file and the
Jacob and Hussey	Wayens wer han he had
Jackson and Fenwick	and Holt
James and Rex	290
Jay versus Rider	The second secon
Ibgrave versus Heydo	4, 256
Jefferie's Trial	283
Jermin versus Lucas	301 her vo he'llekall
Jenkinson and Booth	242
Jenkinson versus Porr	1 1781 00 100
Jennings versus Hank	eys again di un an male -62
1902	a 3 Johnes

ATABLE of the

A STATE OF THE PARTY OF THE PAR	
Johnes versus Williams	Page 190
Johnson versus Browning	18t ey (Lady) wer ler L
Johnson versus May	701 che Calo com
Johnson and Nelthrop	Tot and Agarden det
Johnson versus Rawlex	Arryand Los Prin
Jones versus Bean	The world Contain
Jones versus Randal	See cond Bar cough
Jones and the Wardens ar	nd Comp. of Sadlers 67
Ireland's Cafe	Market & but all 214
Joyner versus Medlicot	AND SE SELECTION
Ireland versus Coulter	12 HOURT A 2011 1 216
	The sense has booke 183.
Jurdain versus Steer	261
4	Lesion (Carret in
Rice K	Semular de la Commenta S
Kelly and -	land with any operange.
Kemp versus Carter	Haff and the ready
Kenrig versus Eggleston	minmay I myay languigs
Ketchmere and Blower	pre well home
Kirby versus Emerson	1012 of Land Street
Knight versus Dauler	intended Williams And 87
425	Lincoln de Contra Speak
032 L.	Right on and Minors
Lad versus Garron	Ist feet wer/in Jacoo
Lane versus Pledall	gmas 144 209
Langford versus Adm. of	Tyler 163
Langhorn's Trial	277, 283
Langhorn versus Merry	1462
Langstone and Robely	PERIOD THE PROTECT OF
Lawrence and Pawlett	240
Layfield's Cafe	89, 103
Layfield the Banker's Cafe	1941 See William Stephion
Lee versus Boothby	Notablist Selso de 140
Lee and Farrington	Andread to have some 191
Lee versus Norris	268
Lenchall and Regem	मिलने पोत्राय अस्त्रतास अर
Lenthall and Hinton	TO ALL LA
138X88	Lennard
	The state of the s

Names of the Principal Cases.

Lonnard and Covert	mediate a la Page (200)
Lindsey (Lady) versus Line	diey (Lord) not 259
	myslandon werter lay no hotel
	estation and Nelchrop
Lifar and Foy	alwedge selver notinz8
Lifter versus Garret	Tores were to bean.
Litcot and Bakewell	deposit appropriate
Loid versus Pollard bank ?	money? West a man be 264
Liuellin and Vandeveld	
Loader versus Samwell	obited Degree nemado
Lock versus Norborn	mile of years a briefs
Lockwood and Hardcastle	Mesonerfue (2) when he
Lodge's Cafe	The state ninb 33
London (City of) & Rek	din O and dino
London City's Case	conger out Dod
Lovelace versus Reignolds	u word zij go was
Lucas and Jermin	1758 (bro.1) 24841166
Latterell verfus Reynall, Tu	rberville and Cory 188
Linley and Tempest	10 10 10 10 10 10 10 10 10 10 10 10 10 1
Lynnet versus Wood	(10.11sh) Due 11.19
Linfey and Dixon	269
Lyster and Thornton	245
101	Rogus verfas Reynal
101 Mi	Medittop seems to m
Maddison and Thurle	89, 103
Madox and Pitman	min brol 136
Man versus Adams	WYSE TO THE THE PROPERTY
Manning versus Bucknall	io is Tirk to mind 210
Mantle versus Wallington	Land to a most 261
Manwood versus Harris	75 1 Par 9m5 anna 208,
March and Blainfield	6 5 2 blot 144
Marrat versus Sly	granker i ada blahan s
Martin versus Hendrickson	variood zure 32
Marlaine versus Hardy	condition I had 201
Mascue versus Shepherd	200 M 2010 225
Matthews versus Cross	come If and Hall 203
May and Johnson	mornill have Her 167
biannich a 4	Mayor

A TABLE of themy

Mayor and Commonal	ty of London verfus Gold
egy:	renin'l han Page 171
Medlicot versus Joynes	
Meere versus Sands	234
Merry and Langhorn	Jam 2 2 3 262
Mico and Bents	3 Physics weether Comms
Michael versus Stockw	of Liver verfus Standreddit
Middleton and Spark	relation en recommendades
Miles versus Barnardis	
Millner versus Crowda	
Mildmay versus Dean	133, 235
Minors versus Hunson	
Mohun's Case	orsege and Blake
Mois and Garth	Man de l'antité de l'an 19846
Monget and Dod	Soising and Rex
Moor versus Brown	detain and Himten molds
	Lord Peterborough 109
	and Thorner and feature4
	the sound the wasters
Montague (Earl of) v	ersus Lord Preston 167
112	N no hab mominal
Manna mandus Barral	Lyfreion and hornon
Negus versus Reynal	104 Wilett 200/10 1151W 164
Nelthrop versus Johns	
Nevil and Dierfly	Shall B valven reg 228
Newfom's Cafe	- 10000) Lan 927/21/3
Nichols perfus Haywo	
	Ancadas hun reir 283
Noel surfre Sande	412 rkins and Discoughes
Noel grange Wells	rou (Proli) deputodres 234 gd. 10/1807 ksedić 140 162 9133
Norborn and Lock	ga
	20° any werfur Phans
	solt try were us, an elamior
Norman and Gardiner	76 ratios verjus Charletter 608 ckering and Cuth
	d Remaind was magazes
Norris and Lee	A Campaga sua magazos
	Nowel's
activity.	TAOMET 2

Names of the Principal Cases.

Trumes of the E	
t Novelpo Cape mond to will	monthio A buPage 114
Narfe and Turner	127
801	Medicot willing Joyne
485	Meere vering Sands
S Oats's Trial	modune 277, 278, 283
Oliver versus Collins	September 19 College
Oliver versus Hundred of	Wallington Dending
Sosbourne versus Hosier	and leton and Spark
Qvery and Huets	किर्मादि कर्मा मिस्तावरवे
Oxenden and Penrice	ad liner verfus Crowd
133, 235	Mildmay actives Dear
622 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	Minors veryes thenso
Rage and Blake	of chun's Cale on
Paget versus Whitchurch	Think and Garen
Rain and Rex	100 911 123,0285
Pain and Hingen	ATT SALE (HAUSE) TOFFEET
Parken and Scavage 10.1	restrictions) medica65
Parker and Stillingfleet	11731 1 11/11/15 201310136
Parker and Gibson versus	Fenant 208
Parris's Cafe	I To trail of Salacia 39
Pasmore and Bushel	210 211
Pateson and Danges	276
Pawlett versus Lawrence	100010 122 312 240
Payton versus Humphreys	mer same gondale 65
Peers versus Bishop	0 hrp 11 209
Peirce and George	Molway 48
Peircy versus Pembroke (C	countels of) and Cur-
rier and Rushworth	1712 1 NUN 413, 118
Perkins and Burrough	the bird atta storious
Peterborough (Lord) verfu	s Lord Mordant 109
Petit al' Speak versus Eggl	eston white is the
Petty versus Evans Pettywere versus Hamson	root was producting
Pettywere versus Hamion	Main 193
Philips versus Chichester Pickering and Cutts	133 Deny
Pickering and Cutts	110 16 C 34 C NAME OF 83
Pidgeon and Catline	(10 (119) (DIW 10 31
Pidgeon and Catline Pigot's Cafe	208
Clawold As I Cal Nowell's	Philips

TABLE of the muy

COUNT LABILE	A MANUAL WAY
Philips and Snow	Page 210
Pindar and Wright	88vert 2885 Haven
Pitfield and Gurlington	ostrosby 44 Dans
Pitman versus Madox	7 mar 1 1 1 1 1 1 3 6
Pledall and Pledall	
Pledall and Lane	
Plimton's Cafe and travidade	chbootlams mais
Plowden and Plowden	
Plumpton versus Robinson	Spewell orland
	shiph I amported
Pollard and Lloyd	262
Pope versus Skinner	save I han ablon 272
Porn and Jenkinson	1 5 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
	Mand We kins Lings
Pratt and Price	and holbriggt
Preston (Lord) his Case	8 maraton wayer
Preston and the Earl of Mon	tague 167
Price versus Torrington (Ear.) million has yiza6
Price versus Foster	r multi-base normica6
Pride versus Earl of Bath	mb no n 265
Prodger's Cafe	maril his big ought
Proud and Green	Personal Charges
Purchase and Brown	Bigiert-verfer Lawr
30 x	Haylonyasque Hum
Service Control Control	Proisesoft Bilhop
Queen versus Carnage & al'	281
- sperfits Mackartney	TOTAL STREET,
	COLUMN TOWNSHIPS THE STATE OF T
	Periland an Burroug
Ramfden's Cafe	oroal) asuatoda pri
Rand and Guy	(1987 (2004E) 111254
Randall and Tones	STREET OF STREET
Davilin's Cafe	
Rawlins and Smith	72, 105
Rawlex and Johnson	178
Read and Clay	207
Rex versus Baspole 126, Bocks	nam 287, Bray 170,
Buckeridge 71, Castlema	in 42, Celier 40.
Sanderion	Chapman
55 W A 5 V 3 S 5 A 3 B 4 3 C 4	

Names of the Principal Cafes.

Names of the Principal Cajes.		
Chapman, Page 291, City of London 70, Nor-		
wich 288, Cleaveland	6, Cotefworth 287,	
Crosby 44, Davis and Ca	rter 47, Dawion 43,	
Feild 31, Fezas 55, Fo		
Frankwell 141, Greepe 47		
Arundel and the Lord H	oward 119, Hutchins	
287, James 290, Inhabit		
Lenthall 81, Pain 123, 2		
	double drank inde	
Reve versus Croply	4018 and Wheeler	
Rescous versus Williams	b den Zame ben 187	
Reignolds and Lovelace	medicial annud 235	
Reynal &c. and Lutterel	1881 ow block Guacus	
	401 & Kier and Cra	
Richardson's Case	missi2953 de 233	
	wir (holder) and 212	
	Clarification and a security	
Robely versus Langston	Dischera with Mascue	
Robinson and Lord Wharto		
Robinson and Plumpton	HWO I hav boatmit42	
Rogers and Hayens	Top The Party	
Rogers and Rogers	, 2011 / hat 214	
Rogers versus Danvers	218	
Rookeby's Cafe	ESTOLA DEV/21 Baffett	
Rookwood's Trial	279, 283	
Roffe's Case	swood bus with mast	
Row and Bruen	liowbolk 450 pi 184	
Row and Townsend	IF held perfis Sybil s	
Rowland and Styart	and tun 200 200	
	166, 278	
Russell's (Lord) Trial	10: 11 toud bank 277	
Rutter versus Hebden	seedal him dish 32	
New Assessment Contract Contra	Continued Section	
0.00 e.c. 55	Landing and Campan	
Sadler versus Taylor	Estimate View Solution	
Sampson versus Tothill Samwell and Loader	Brew and University	
Samwell and Loader	Afficie quel Ha docto y 26	
Sanderson and Ascue	of the legisle will	
- mandad	Sanderson	
	P	

and ATABLE of the

Sanderson versus Nichols	Page 21
Sanders versus Burrough	De 21/20 1 23
Sands and Meere	19 more aibid
Sands and Noel washing many	ibid
Sarsfield versus Witherly	W hom 3 14
Sarum (Bishop of) versus Sir Broke	et Spencer 130
Savage and Turbervil	I sulvano de 24
	263
Savil and Frankland	web law mac
Scott's Cafe	11180 01121
Searl and Searl	Sun scoring 73
Searl versus Williams	has adoi 41
Seaton versus Gilbert	100 000 000
Seik, Baxter and Cramfield) her no 440
Sewell & Regina	of the seria 61
Shaftsbury (Earl) versus Lord Digh	yaw anadas 17
Shelly versus Sackvil	215
Shepherd and Mascue	W him 19225
Sherrard and Wright	- 193 Herr 105
	245
Sibley and Tuck	18
	130 ab J27
Sidney's Trial	278, 279
	242
	272
Skrimshaw and Downs	245, 246
Slegin and Bladwell	201
	205
Smallbrook and Fitz	252 252 44
Small and Willoughby	252
Smallbrook and Wicks	44
martle versus Williams	271
Smith and Bass	175
smith and Cheney	on fleam 259
mith and Goddard	1.82
mith and Goodler	127 man 200
mish and Danding	11-2-219, 1887 2 PM-18-2-2
mith and Rawlins	72, 105
Cross Comments	Snelegar

Names of the Principal Cases.

Snelegar versus Brograve	Page and
Snow versus Cutler	tenders versus Burroug
Snow versus Philips	OLLds and Messe
Spark versus Sir Hugh Mi	iddleton in his aba82
	had Washer 1473 284
Speke and Eggleston	sem (In a real A) make
Speak versus Hungerford	\$3\$age and Turbervil
Spencer and Clayton	815 vage parine Parker
	eril and Frankiens
Sprigwell versus Allen Stamp versus Hutchins	Stell's Cole
Stanhope and Griffin	Egarl and Seath
St. John and Dennis	resel werfus Williams
Stanison and Davis	retton verfus Gibere
Stanton and Chamberlain	
Steiner versus the Burgesse	
Stephens versus Gerrard	36.4 fesbury (Barl) verft
Stephen's Cafe	mirrel to physe ville?
Steer and Jurdain	selection branga61
Stillingfleet versus Parker	361 Frand and William
Stockwith and Michael	out the establishment
Stone versus Gubbon	Borev and Trust which
Strode versus Dr. Holt	rsynsM wa vit
Strodwick and the Bishop	
Stroud and Hems	ב262 משונה לונולפים
	do sond line rear 200
Sufach and Gallaway	col bus werlim 169
	Slegin and Black the
709 T.	Elvheld verlas Sybil
Tapper versus Davenant	dayallbrook and Fice
Tarling and Dealton	Westership Williams
Taylor and Beal	See Microok and Mickey
Taylor and Hamond	Sanarde verint whitem
Taylor and Sadler	Aceita and Dal
Tempest versus Linley	sorich and Cheney
Tenant and Bland	brath and Goodard
Tenant versus Parker and	Gibrarood his was
Terrill versus Dune	100 11101121 20/100 11/226
Thatcher versus Waller	mina Abra duter
3943.500	Thomas

A TABLE of the

Thomas versus Cook	Page 112
Thompson and Bolten	roma I aga non 22
Thompson and Edwards	
Thorner and Horton verfus M.	
Thornton versus Lyster	Hill, arm quab 245
Throgmorton and Walton	Maxaeth deille delte
Thurle versus Madison	89, 103
	293
Tilford and French	203
Tiffard and Wardoup	173
Tothill and Sampson	M O Kalemaiskas
	me (bus not 262
Torrington (Earl) and Price	1971 Lan min 136
Townfend and Row	real law natemai
Treil versus Edwards	
	rittaker gand Del
Trewinnard and Dean and Cha	
Trice versus Pratt	district and 221
Trowell versus Castle	128
Trundle and Brian	105
Turbervill versus Savadge	243
Tuck versus Sibley	LAG TEN COMEST
Tuckall and Herbert	141
Turner versus Nurse	200 M A Chip 124
Turnstall and Grathooke	wall of hear not 64
	1 has no 64
Tyrringham and Vincent	76
V.	Withorick and M
Vandeveld and Lluellin	29
Vast versus Gawdy	AND CASE OF SAME AND
Vicary versus Farthing	139
Vincent and Tyrringham	76
Violet versus Cook	221
W.	A LITTOT FUE TOTTO AM
Wakeman's Trial	284
Waldron versus Ward	วเลีย สมาราย เมลิ
	100 mm L 225
	661g ver 21 All b
组 H T	Waller

Names of the Principal Cases:

Temos of the Tri	
Waller versus Thatcher	
Walton and Throgmorton	Phompson and Bolten
Ward and Blunt	Automotion and Edwar
Ward and Brett	
Wardoup and Tiffard	flyd myn norming
Warner versus Wainsford	Letternormon and War
Wardens and Company of	Sadlers and Jones 64
Wardens and Company of Watt's Case	66 relton continue
Watfon versus Sparkes	147, 224
Wells and Noell	quebre / bus britis
Welch and Over and Goodw	vin
Wharton versus Robinson	teallon and The The
Wheeler and Berry	140 (1111) corga 1462
Wheeler versus Poins	Toy The bushagor
	AT 5 1 1 1 1 1 262
Whitaker and Collet	West 1970 0 0001190
Whitchurch and Paget	14 Viennita de Digmittal
Wicks and Smallbrook	A Property S
Wilkinson and Gower	March March March
Williams and Rescous	· · · · · · · · · · · · · · · · · · ·
Williams and Searl	Home Hampa Ast
Williams and Smartle	2 1 1 2 1 1 271
Williams and Johnes	21. Lan Ho 190
	1 100 1. X 1150 10 1252
Wilfon and Gary	School In Halle 49
Wilson and Birch	id atoti briggin48
Wincop's Cafe	and how medging 155
Witherick and Wood	taliber bes my 177
Witherly and Sarsfield	Hamily has blove 145
wollington and Mantle	vowa Caway 201
Wood and Lynnet	armittand substance virtual
Wood borjas Witherick	vicent and Lymneha
Vi Obdibita s Caje	Set veries Cook
Woller and Drury	183
Wright and Pindar	88 ceman's Print
Wright verfus Sherrard	STATE TO STATE OF THE STATE OF
7.55 Y.	Walker verfus Dawlon
	Soc ond Frankland
Aller 4	THE

THE

CONTENTS.

CHAP. I. Of Evidence in general.

CHAP. II. Of Witnesses in general.

C H A P. III. Of Witnesses that are infamous.

CHAP. IV. Of Witnesses that are interested in the Event of the Cause.

CHAP. V. Of written Evidence.

CHAP. VI. Of Evidence on the general Iffue.

CHAP. VII. Of Evidence in Actions on the Case on Promises.

CHAP. VIII. Of Evidence in Actions on the Case for Words, malicious Indictments, &c.

CHAP. IX Of Evidence in Actions of Debt-

CHAP. X. Of Evidence in Actions of Tref-

CHAP. XI. Of Evidence in divers Actions.

C H A P. XII. Of Evidence in Pleas of the Crown and Criminal Cases.

Potent covies Albertabata

THE

LAW

OF

EVIDENCE.

CHAP. I.

Of Evidence in General.

in a legal Understanding doth not only contain Matters of Record, as Letters Patent, Fines, Recoveries, Enrolments, and the like; and Writings under Seal, Charters, and Deeds, and other Writings without Seal, as Court-Rolls, Accounts, and the like; which are properly called Evidences; but in a larger Sense it containeth also Testimonia, or the Testimony of Witnesses, and other Proofs, to be produced and given to a Jury for the Find-

ing of any Issue joined between the Parties; and both these Kinds are call'd Evidence, because thereby the Point in Issue is to be made evident to the Jury. Probationes debent esse evidentes, (id est) perspicuæ & faciles intelligi. Co. Lit. 283. a.

- 2. And according to the above Definition, Bracton faith there is Probatio duplex, viz. Viva, as by Witnesses Viva voce; and Mortua, as by Deeds, Writings and Instruments; and many Times Juries together with other Matter are much induced by Presumptions, whereof there be three Sorts, viz. Viclent, Probable, Light and Temerary: Violent Prefumption is many Times Plena Probatio, a clear Proof; as if one be run thro' the Body with a Sword in a House, whereof he instantly dieth, and a Man is feen to come out of that House with a bloody Sword, and no other Man was at that Time within the House: Probable Prefumption moveth little, but Prasumptio Levis, or a light Prefumption, moveth not at all.
- 3. So it is in the Case of a Charter of Feoffment, if all the Witnesses to the Deed are dead, (as no Man can keep his Witnesses alive, and Time weareth out all Men) then a continual and quiet Possession for any Length of Time will make a strong or violent Presumption, which stands for Proof; for, Ex diuturnitate temporis omnia præsumuntur solenniter esse acta: Also the Deed may receive Credit per Collationem Sigillorum, Scripturæ, &c. by comparing the Seals, the Hand-writing, or other Circumstances; and as my Lord Coke says, Super fidem Chartarum, mortuis Testibus, erit ad Patriam de necessitate recurrendum ; i. e. Where the Witnesses that attested the Deed are dead, and all other Proofs are loft, (or wanting) Recourse must

must of Necessity be had to the Belief of the

Fury. Co. Lit. 6. b.

4. See Chief Baron Gilbert's Reports, 155, 156. Where Proofs not read in the Exchequer (because the Title was there admitted) were not allowed to be read in the House of Lords; and yet ibid. 151. upon an Appeal from a Decree in Chancery, new Matter was there admitted to be read, tho' not formerly in Proof: But as to Evidence in Courts of Equity, what shall be allowed or not, see the General Abridgment of Cases in Equity, lately published, Tit. Evidence

5. And per Vavasor, Evidence is only given to the Jury, to inform their Consciences of what is right; and if no Evidence is given, yet they shall give a Verdict for one of the Parties.

14 Hen. 7. 29.

6. No Issue can be joined of Matter in Law; no Jury can be charged with the Trial of Matter of Law barely; no Evidence ever was or can be given to a Jury of what is Law or not; no such Oath can be given to, or taken by a Jury, to try Matter in Law, nor can any Attaint lie for such a false Oath. Vaugh. 143. Bushel's Case. But they only can judge of the Evidence of Fact; the Judge cannot.

As to the Evidence which the Jury have of

the Fact, it is thus:

The Law supposeth them to have sufficient Knowledge of, and Capacity to try, the Matter in Issue, (and so they must) the no Evidence were given on either Side in Court; but to this the Judge is a Stranger, i. e. he cannot judge without Evidence, the the Jury may, Vaug. 146.

2. They may have Evidence from their own personal Knowledge, by which they may be af-

fured, and fometimes are, that what is deposed in Court is absolutely false; but to this the Judge is a Stranger, and he knoweth no more of the Fact than he hath learned in Court, and perhaps by false Depositions; and consequently knows nothing.

3. The Jury may know the Witnesses to be stigmatized and infamous; which may be unknown to the Parties, and consequently to the

Court. See Chap. 3.

4. In many Cases the Jury are to have View necessarily, (i. e. of Necessity) and in many by Consent, for their better Information; to this E-vidence likewise the Judge is a Stranger. Vaugh. 147. Bushel's Case.

on the Fast, the Jury may if they will take Cognizance of the Law arising upon that Fast.

See the same Cafe.

6. But the Judges are ordinarily and properly to judge of and declare the Law, where both Parties have put themselves on the Judgment of the Court by Way of Demurrer. Ibid. See 2 Inft. 662.

7. The Court is to explain the Evidence, and not the Profecutors. State Tr. 1 Vol. 224. Where Evidence may be given after the Profecutor has replied, see there 238. And note; Exceptions to an Indictment must be taken before Plea pleaded. 1 Vol. 576. 4 Vol. 92, 219.

8. Evidence shall never be pleaded, because it only tends to prove Matter of Fact: And for this Reason the Facts shall be pleaded; and if they be denied, the Evidence ought to be given to the Jury, and not to the Court. 9 Coke 9. b.

Dowman's Cafe.

9. Per Cur'. He, who affirms the Matter in Isfue, ought to begin to give Evidence. Litt. Rep. grave. Dyer 247. Placit. N. B. 75.

Plene Administravit, and the Plaintiff replied Assets; on which they were at Issue: And in giving Evidence to the Jury, the Desendant began sirst. Nota, quia extra ordinem credo, because it was in the Negative. Dyer 80. Placit. 53. Dean and Chapter of Exeter versus Trewinnard.

11. The Counsel of that Party which doth begin to maintain the Issue, whether of Plaintiff or Defendant, ought to conclude. Trials per

pais 220.

Lefendant, after which, and before the Jury gave their Verdict publickly, the Plaintiff defired to give more Evidence; for, as it feem'd, he discover'd that the Jury had found against him; but the Judges would not admit it, but took the Verdict, after Justice Southcote had been in the Common Pleas to ask the Opinion of the Judges there. Dal. 80. Anonymus.

13. Spiritual Acts, and Things done in a foreign Country, may be given in Evidence to a Jury. 7 Ed. 4. 16. 6 Co. 47. Dowdale's Case, &c. And so may Things done beyond Sea, where they are duly certified under their Seal of Office, or by a Publick Notary: And yet a Certificate was held to be no Evidence. State Trials,

2 Vol. 105, 456.

14. But doubtless on Trials of Things done beyond Sea, the Testimony of a Publick Notary there, has been allowed good Proof here; and Ley Chief Justice said, Such Proof as they will allow beyond Sea, we will allow here. 2 Roll's Rep. 346. Anonymus. Cases in Law and Equity 66.

Courts of Admiralty, are allowed to be good E-vidence here by the late Statute for Proceedings at Law to be in the English Language. See the Statute. Wherein the Common and Eccle-fiastical Law do differ in Point of Evidence, see Carth. 142. (Shotter v. Friend) and hereaster—A Sentence in the Spiritual Court may be made woid at Wesiminster, where not founded on legal Evidence.

16. An Exemplification of an Entry of Goods at Rotterdam held no Evidence here. Cases in Law and Equity, 1 Part 75. Yet a Copy of an Agreement in Holland, attested by a Publick No-

tary, held good Evidence. Ibid. p. 322.

17. The Confession of a Party must be taken whole, and not by Parts; as if to prove a Debt, it be sworn that the Desendant confessed it, but withal he said at the same Time that he had paid it; his Confession shall be valid as to the Payment, as well as that he owed it. Per Hale Chief Justice. Trials per pais 209. 5 Mod. 163. Rex versus Pain.

18. Per Holt, Confession is the worst Sort of Evidence that is, if there be no Proof of a Transaction or Dealing, or at least a Probability of Dealing between Parties. Far. 49. Anonymus.

Proof must be made of it to a Jury, in an Action; but if any other Manner of Proof is agreed on, then it need not. 10 E. 4. 11. T. 7. R. 2. Moor 845 & 888. Gold versus Death, S. C. 2 Cro 381. S. C. Ho. 692. S. C. 1 Roll's Rep. 222 & 261. S. C. 3 Bulftr. 54, & c. But note; a Negative cannot be proved but by an Affidavit. 2 Inst. 662. See also the Cases of Rodney against Strond, and The King against Combes. Cumb. 18 & 57. touching affirmative and negative Evidence.

20. In Things of great Antiquity, Omnia præfumuntur solemniter esse acta. Palmer 427. Cope versus Bedford. See before.

21. Persons once in Being shall be intended still living, if the contrary is not proved. 2 Roll's

Rep. 461. Throgmorton versus Walton.

By an Act of 19 Car. 2. cap. 6. for the Redress of Inconveniencies by Want of Proof of the Decease of Persons beyond Sea, or absenting themselves, upon whose Lives Estates do depend, 'tis enacted as follows:

Whereas divers Lords of Manors, and others, have used to grant Estates by Copy of Court-Roll, for one, two, or more Life or Lives, according to the Custom of their several Maonors; and have also granted Estates by Lease for one or more Life or Lives, or elfe for Years determinable upon one or more Life or Lives; and it hath often happened that fuch Person or Persons, for whose Life or Lives such Efates have been granted, have gone beyond the Seas, or so absented themselves, for many Years, that the Lessors and Reversioners canonot find out whether fuch Person or Persons be alive or dead; by Reason whereof such Leffors and Reversioners have been held out of Possession of their Tenements for many Years, after all the Lives upon which fuch Eflates depend are dead, in Regard that the Leffors and Reversioners when they have brought Actions for the Recovery of their Tenements, have been put upon it to prove the Death of their Tenants, when it is almost impossible for them to discover the same.

For Remedy of which Mischief, so frequently happening to such Lessors or Reversioners, Be it enacted, &c. That if such

Ferson or Persons, for whose Life or Lives fuch Estates have been, or shall be granted, s as aforesaid, shall remain beyond the Seas, or elsewhere absent themselves in this Realm, by the Space of feven Years together, and no fufficient and evident Proof made of the Life or Lives of fuch Person or Persons respective-Iy, in any Action commenced for the Recovery of fuch Tenements by the Lessors or Reversioners: In every such Case, the Person or Persons, upon whose Life or Lives such Efate depended, shall be accounted as naturally dead; and in every Action brought for the Recovery of the faid Tenements by the Leffors or Reversioners, their Heirs or Assigns, the Judges before whom fuch Action shall be s brought, shall direct the Jury to give their Werdict, as if the Person so remaining beyond the Seas, or otherwise absenting himself, were dead. 19 Car. 2. c. 6. Sett. 1 & 2.

Also the foregoing Statute is more fully enforced by the Statute of 6 Anna, cap. 18. Entitled, An Act for the more effectual Discovery of the Death of Persons pretended to be alive, to the Prejudice of those who claim Estates after their Deaths; which runs thus: Whereas divers Persons, as Guardians and Trustees for Infants, and Husbands in Right of their Wives, and other Persons having Estates or Interest (in Lands) determinable upon a Life or Lives, (bave) continued to receive their (the) Rents and Profits of fuch Lands, after the Determination of fuch particular Estates or Interests; and whereas the Proof of the Death of the Persons, on whose Lives such particular Eftates or Interest depend, is very difficult; and feveral Persons have been, and may be

'thereby

s thereby defrauded, For Remedy whereof, and for preventing fuch fraudulent Practices, Be s it enacted, &c. That any Person or Persons. who hath or shall have any Claim or Demand in or to any Remainder, Reversion or Expectancy, in or to any Estate after the Death of any Person within Age, marry'd Woman, or any other Person whatsoever, upon Affidavit made in the High Court of Chancery, by the Persons so claiming such Estate of his or her Title; and that he or she hath Cause to believe that fuch Minor, marry'd Woman, or other Person, is dead; and that his or her Death is concealed by fuch Guardian, Truftee, Husband, or any other Person, shall and may once a Year, if the Person grieved should think fit, move the Lord Chancellor, Keeper, or Commissioners for the Custody of the Great Seal of Great Britain, for the Time being, to f order, and they are hereby authorized and required to order such Guardian, Trustee, Husband, or other Person concealing, or fufpected to conceal fuch Person at fuch Time and Place, as the faid Court shall direct. on personal or other due Service of such Order, to produce and shew to such Perfon and Persons not exceeding Two, as shall in fuch Order be named by the Party or Parf ties profecuting fuch Order, fuch Minor, mar-' ry'd Woman, or other Person aforesaid: And ' if fuch Guardian, Trustee, Husband, or other Person aforesaid, shall refuse or neglect to produce or shew such Infant, marry'd Woman, or fuch other Person on whose Life any such Efate doth depend, according to the Directions; that then the Court of Chancery is hereby authorized and required to order such Guardian, Truftee.

5 Truftee, Husband, or other Person, to produce fuch Minor, marry'd Woman, or other Person fo concealed, in the High Court of Chancery, or otherwise before Commissioners to be ap-6 pointed by the faid Court, at fuch Time and Flace as the faid Court shall direct; Two of which Commissioners shall be nominated by the Party or Parties profecuting fuch Order, at his, her, or their Costs and Charges; and in case such Guardian, Trustee, Husband, or other Person, shall refuse or neglect to produce fuch Infant, marry'd Woman, or other Perfon fo concealed in the Court of Chancery, or before fuch Commissioners (whereof Return fhall be made by fuch Commissioners, and that Return filed in the Petty-Bag Office) in any or either of the faid Cases, the said Minor, marry'd Woman, or fuch other Person so concealed. fhall be taken to be dead; and it shall be lawful for any Person claiming any Right, Title, or Interest, in Remainder or Reversion, or otherwise, after the Death of such Infant, marry'd Woman, or other Person so concealed as aforesaid, to enter upon such Lands, Tenements and Hereditaments, as if fuch Infant, marry'd Woman, or other Person so concealed, were actually dead.

Gourt by Affidavit, that such Minor, marry'd Woman, or other Persons, for whose Life such Estate is holden, is or lately was at some certain Place beyond the Seas, in such Affidavit to be mentioned; it shall and may be lawful for the Party or Parties prosecuting such Order as aforesaid, at his, her or their Costs and Charges, to send over one or both the said Persons appointed by the said Order,

' ving

to view fuch Minor, marry'd Woman, or other Person, for whose Life any such Estate is holden; and in case such Guardian, Trustee, Husband, or other Person, concealing or suspected to conceal such Persons as aforesaid, shall refuse or neglect to produce, or procure to be produced to fuch Person or Persons, a personal Wiew of fuch Infant, marry'd Woman, or other Person, for whose Life any such Estate is holden; that then, and in fuch Case, such Person and Persons are hereby required to make a true Return of fuch Refusal or Neglect to the Court of Chancery; (which Return fhall be filed in the Petty-Bag Office) and thereupon fuch Minor, marry'd Woman, or other Person, for whose Life such Estate is 6 holden, shall be taken to be dead; and it shall be lawful for any Person claiming any Right, 5 Title or Interest, in Remainder, Reversion, or otherwise, after the Death of such Infant, marry'd Woman, or other Person, for whose Life any such Estate is holden, to enter upon fuch Lands, Tenements and Hereditaments, s as if fuch Infant, marry'd Woman, or other Person, for whose Life any such Estate is holden, were actually dead.

§. 3. Provided, If it shall afterwards appear upon Proof in any Action to be brought, that such Infant, marry'd Woman, or other Person, for whose Life any such Estate is holden, were alive at the Time of such Order made; that then it shall be lawful for such Infant, marry'd Woman, Guardian, Trustee, or other Person, so having any Estate or Interest determinable on such Life, to re-enter upon the said Lands, Tenements or Hereditaments; and for such Infant, marry'd Woman, or other Person, ha-

ving any Estate or Interest determinable upon fuch Life, their Executors, Administrators or Assigns, to maintain an Action against those who since the said Order received the Profits of such Lands, Tenements or Hereditaments, or their Executors or Administrators; and therein to recover sull Damages for the Profits of the same, received from the Time that such Infant, marry'd Woman, or other Person, having any Estate or Interest determinable upon such Life, were ousted of the Possession of

fuch Lands, Tenements or Hereditaments. 6 6. 4. Provided also, if any such Guardian, Truftee, Husband, or other Person or Persons, holding or having any Estate or Interest detere minable upon the Life or Lives of any other Persons, shall by Affidavit, or otherwise, to the Satisfaction of the faid Court of Chancery make appear, that he, she or they, have used his, her, or their utmost Endeavours to procure fuch Infant, marry'd Woman, or other e Person or Persons, on whose Live or Lives fuch Estate or Interest doth depend, to appear in the faid Court of Chancery, or elsewhere, s according to the Order of the faid Court in that Behalf made; and that he, she or they cannot procure or compel fuch Infant, marry'd Woman, or other Person or Persons so to ape pear; and that fuch Infant, marry'd Woman, or other Person or Persons, on whose Life or Lives such Estate doth depend, is, are, or were living at the Time of fuch Return made and filed as aforefaid; then it shall be lawful for fuch Person or Persons to continue in the Possession of fuch Estate, and receive the Rents and Profits thereof, for and during the Infancy of fuch Infant, (Quare of Non compos, &c.) and

the Life or Lives of fuch marry'd Woman, or other Person or Persons, on whose Life or

Lives fuch Estate or Interest doth or shall de-

e pend, as fully as he, she or they might have

done, if this Act had not been made.

6 6. 5. And further enacted, That every Per-6 fon, who as Guardian or Trustee for any In-

fant, and every Husband seised in Right of his Wife only; and every other Person ha-

ving any Estate determinable upon any Life

or Lives, who after the Determination of fuch

particular Estates or Interests, without the ex-

press Consent of him, her or them, who are,

or shall be next and immediately intitled, upon

and after the Determination of such particular

Estates or Interests, shall hold over, and con-

tinue in Possession of any Manors, Messuages,

Lands, Tenements or Hereditaments, shall be,

and are hereby adjudged Trespassors; and that

every Person and Persons, his, her and their

Executors and Administrators, who are, or shall

be entitled to any fuch Manors, Messuages,

Lands, Tenements and Hereditaments, upon

and after the Determination of fuch particular

6 Estates or Interests, shall and may recover in

Damages against every such Person or Persons,

fo holding over as aforefaid, and against his,

her or their Executors or Administrators, the

full Value of the Profits received during fuch

wrongful Poffession.

See also the Stat. 4 Geo. 2. cap. 28. for more effectual preventing Frauds committed by Tenants; and for the more easy Recovery of Rents, and Renewal of Leases; and the several Statutes bereafter recited in Chap. 6. Also the Stat. 5 Geo. 2. cap. 30. To prevent the Committing of Frauds by Bankrupts; and several Statutes 2 Geo. 2. viz.

cap. 25. For more effectual preventing, and further Punishment of Forgery, Perjury, and Subornation of Perjury, and to make it Felony to steal Bonds, Notes, or other Securities for Payment of Money, cap. 20. For Relief of Insolvent Debtors, c. 23. For better Regulating Attornies, cap. 24. For preventing Bribery and Corruption in the Election of Members to serve in Parliament; in all which, and divers others, some Directions are given touching the Proof or Evidence of those Crimes respectively.

Also by Stat. 6 G. 1. c. 21. sett. 24. For preventing Frauds and Abuses in the Publick Revenues of the Excise, Customs, Stamp-Duties, &c. 'tis enacted, 'That if on Trial of any Information,

Action, Suit or Profecution, relating to the Duties of Customs or Excise, or to any Seizures,

Penalties or Forfeitures, relating to the faid

Duties; or if upon Trials in any Action, &c.

fuance of any Acts relating to the faid Duties,

any Question shall be made, or any Doubts or

Disputes shall arise touching the Keeping of

any Office of Excise, in any City or Town, or

touching one or more Defendants being Officers

of either of the faid Duties: In every fuch

Case, Proof may be made either of the actual

Keeping of such Office, in such City, &c. or

of fuch Defendants actually exercifing of, or

of being imployed in fuch Offices, before and

at the respective Times, when the Matters in

Question shall have been committed or omit-

ted, without producing any particular Persons

to prove the Names of the Commissioners, to

any Commissions to be of their own Hand-

writing; and such Proof shall be deem'd legal

and fufficient Evidence, unless or until by other

· Evidence the contrary shall appear.

And by Stat. 11 Geo. 1. cap. 30. fect. 31. 'Tis further enacted, 'That if on the Trial of any Information, Action or Suit, relating to his Majesty's Customs, Excise, or other Duties, for to any Seizures, Penalties or Forfeitures touch ing the faid Duties, or the Collection thereof; or if upon the Trial of any Indictment. Action, Suit or Profecution, against any Perfon for any Thing done in Pursuance of any Act of Parliament relating to the faid Duties; or if upon Trial of any Information or Indiament, for affaulting, refifting or obstructing any Officer of the Customs, Excise, or other his Majesty's Duties, in the Execution of his · Office, or for rescuing any Goods or Merchandizes, feised or to be feised by any such Officer, any Question shall arise whether any Perfon be an Officer of his Majesty, for any of the faid Duties; in every such Case Proof shall be made and admitted, that such Person was reputed to be, and had acted in, and in Fact exercised such Office, at the Time when the Matter in Controversy at the Trial hape pen'd to be done, committed or omitted, without producing or proving the particular Com-6 mission, Deputation, or other Authority, whereby he was constituted or appointed; and in every fuch Case, such Proof shall be deemed and taken by the Judges, or Justices, before whom any fuch Trial shall be had, to be good and legal Evidence, unless by other Evidence the contrary shall be made appear. See bereafter Chap. 2, 3, 6, &c. other Statutes relating to Evidence.

CHAP. II.

Of Witnesses in General.

Times is derived of the Saxon Word Peten; i. e. scire: Quia de biis quibus scient testari debent, & omne Sacramentum debet esse certæ Scientiæ. In Latin, Testis à testando; & testari est Testimonium perbibere. Unde Regula Juris, Plus valet unus oculatus Testis quam autiti decem: Et Testis de Visu præponderat aliisa 4. Inst. 279.

Process to bring in his Witnesses. State Trials, 1 Vol. 174. 3 Vol. 139, 220. yet the Court denied they had any such Power. Ibid. 1 Vol. 805. 3

Vol. 285.

3. Any one (not disqualified and objected to) may be a Witness, tho' not subpana'd, &c. Ibid. 3 Vol. 392. and Witnesses are not to be cross-examin'd till they have gone thro' their Evidence for the Party, on whose Side they are produced. 2 Vol. 740. 3 Vol. 82.

4. Witnesses are sworn to tell the Truth of what they know, not what they believe; for they are to swear nothing but what they have heard or seen. Lib. Assiz. An. 23. Placit. 11. Vaugh. 142.

Bufbel's Cafe.

TAHA.

Witnesses. Dalt. 104. Anonymus. And in some Cases of the Age of Nine or Seven. Vide post.

6. A few being a Witness is sworn upon the Old Testament. 2 Keb. 314. Pl. 23. Robely versus Langston: Quere, How far a Mahometan may be a Witness?

that a Peer produced as a Witness ought to be sworn, because he said the House of Lords had made an Order contra. 3 Keb. 631. Earl of Shaftsbury versus Lord Digby.

8. Quakers are not sworn when they give Evidence, but only take a solemn Affirmation; and this is by an Act of Parliament made

I Georg.

9. A Judge may be a Witness, and shall be sworn in Court as a Witness, where he knows any Thing of the Fact in Question; and yet shall remain in the Capacity of a Judge. State

Trials, 2 Vol. 581, 618. 4 Vol. 188.

dent of the Council, were both in Commission for the Trial of the Prisoners, and sat upon the Bench; and there being Occasion to make Use of their Testimony against Hacker, one of the Prisoners, they both came off from the Bench, and were sworn, and gave Evidence, and did not go to the Bench again during that Man's Trial; and it was agreed by the Court that they were good Witnesses, tho' in Commission, and might be made Use of. Kelynge 12.

a Witness. State Tri. 2 Vol. 309. And this not one ly in Criminal Cases, but also in Civil. So

12. Members of the House of Commons (who are Prosecutors) may be Witnesses in an Impeachment; but none of the Grand Jury, who found the Bill, are to be Witnesses on an Indistment. See Cook's Trial.

13. No Evidence is necessary on passing a Bill of Attainder; but a private Satisfaction to every Man's Conscience is sufficient. 1 Vol. 349. 4 Vol. 177, 179, 200. And it has been held, that circumstantial

cumstantial Evidence is sufficient to convict in Cases of High Treason, (sed Quære Legem) 1 Vol.

112. 2 Vol. 242. 3 Vol. 634.

14. The Grand Jury may not send for other Evidence than is produced to them on the Behalf of the King. State Tri. 4 Vol. 341. (Quare, if this is not repugnant to Reason).

a Grand Jury to find a Bill. 2 Vol. 306. 4 Vol.

469.

16. Refusing to give Evidence to a Grand Jury is a Contempt, and finable; as in the Case of Lord Presson, 1 Salk. 278. who was committed by the Quarter-Sessions for refusing to be sworn to give Evidence to the Grand Jury, on an Indictment of High Treason: And Holt Ch. Just. said it was a great Contempt, and had he been there, he would have fined him, and committed him till he had paid the Fine; but it being otherwise, he was bailed.

dence with them out of Court, but what are under Seal. 2 Vol. 324, 474. 3 Vol. 568. 4 Vol. 49.

18. A Juror who is a Witness must be also sworn in open Court to give Evidence, if he be call'd for a Witness; for the Court and Counfel are to hear the Evidence, as well as the Jury.

T. per pais 221.

19. At a Trial at Bar, the Defendant's Counfel defired that the Witnesses to a Bond might be examin'd; so that one might not hear what the other said, the Bond being supposed to be forged; and the Court granted it. 2 Sid. 131. Guilliams & Ux' versus Hulie & Ux'.

20. In an Act 5 & 6 Ed. 6. cap. 12. for the Repeal of certain Treasons and Felonies, there is the

following Clause:

Provided always, and be it enacted by the Authority aforesaid, that no Person or Persons, after the first Day of February next coming? fhall be indicted, arraigned, condemned or convicted, for any Offence of Treason, or for any Words before specified to be spoken, (that is affirming the King is not Supreme Head of the Church) after the faid first Day of February; for which the same Offender or Speaker, Offenders or Speakers, shall in any wife fuffer any Pains of Death, Imprisonment, Loss or Forfeiture of his Goods, Chattels, Lands or Tenements, unless the same Offender or Speak er, Offenders or Speakers, be accus'd by two fufficient and lawful Witnesses; or shall willingly, without Violence, confess the fame. 1 Ed. 6. c. 12. Sect. 22.

21. In an Act 5 & 6 Ed. 6. cap. 11. for the Punishment of divers Kinds of Treasons; there is this Clause:

Provided always, and be it enacted by the Authority aforesaid, that no Person or Perfons, after the first Day of June next coming; fhall be indicted, arraigned, condemned, convicted or attainted for any of the Treasons or Offences aforesaid, or for any other Treasons that now be, or hereafter shall be, which shall bereafter be perpetrated, committed or done; unless the same Offender or Offenders be thereof accused by two lawful Accusers; which said, Accusers, at the Time of the Arraignment of, the Party accused, if they be then living, shall be brought in Person before the Party so accused; and avow and maintain that, that they have to fay against the faid Party to prove him guilty of the Treasons; or Offences contained in the Bill of Indictment laid against the Party arraigned, unless the faid Party shall willingly, without 0 2

- Violence, confess the same. 58 6 Ed. 6. c. 11.
- . Sect. 8.
- 22. See Judge Hale's Opinion, that two Witnesses were necessary to some one Overt-Act of High Treason. State Tri. 1 Vol. 620. See further of this bereaster, p. Yet held one Witness to one Overt-Act, and another to another Overt-Act of the same Treason, are two Witnesses in Law to the same Act of Treason. Ibid. 1 Vol. 607. 2 Vol. 362, 633, 757. 3 Vol. 109. Vide post. And even one Witness with concurring Circumstances held sufficient to convict of High Treason. 1 Vol. 569.

23. By an Act 1 & 2 Ph. & M. cap. 1. for the Punishment of the Bringing in of the Counterfeit Coins of foreign Realms, being current within

this Realm, it is enacted,

That all and every Person or Persons that shall, at any Time after the said twentieth Day of January, be accus'd and impeached of any of the Offences contained and provided

- for in this Statute; or if any other Offences concerning the Impairing, Counterfeiting, or
- Forging of any Coin current within this Realm,
 shall and may be indicted, arraigned, tried,
- convicted or attainted, by fuch like Evidence,
- and in fuch Manner and Forms, as hath been used and accustom'd within this Realm, at
- any Time before the first Year of the Reign
- of our late Sovereign Lord King Edward VI.
 Any Statute, Custom, Law, or Usage, to the
- contrary thereof, in any wife notwithstanding.

6 1 8 2 P. 8 M. c. 11. Sect. 3.

24. In an Act 4 fac. 1. cap. 1. for the utter Abolition of all Memory of Hostility, and the Dependance thereof, between England and Scotland; and for the repressing of Occasions of Disorders. orders, and Disorders in Time to come, there is this Clause:

Be it therefore enacted by the Authority aforesaid, That all Offences of Conjurations, Witchcrast, and dealing with evil and wicked Spirits, Murder, Manslaughter, felonious Burning of Houses and Corn, Burglary, Robbing of Houses by Day, Robbery, Theft, the detestable Vice of Buggery, committed with Mankind or Beast, and Rape, heretofore done and committed fince his Majesty's Coming to the Crown of England, or hereafter to be done or committed by any of his Majesty's naturalborn Subjects of this Realm of England, or the Dominions of the same, within the Realm of Scotland, or the Dominions thereof, and the Accessaries of and to the same, shall be from henceforth enquired of, heard and determined before his Majesty's Justices of Assize, or his Commissioners of Oyer and Terminer, or Gaol-delivery, being natural-born Subjects within the Realm of England, and none other, . by good and lawful Men of the Counties of " Cumberland, Northumberland, Westmoreland, or any of the faid Counties, at the Election of the faid Justices of Affize, or Commissioners, in like Manner and Form, to all Intents and Purposes (the Alterations, hereafter in this Act express'd, only excepted) as if such Offences had been done and committed within the same Shire where they shall be so enquir'd of, heard and determined, as aforefaid.

At all which Trials, for the better Discovery of the Truth, and for the better Information of the Consciences of the Jury and Justices, there shall be allowed unto the Party so arraigned, the Benefit of such Witnesses only to

C 3

be examined upon Oath, that can be produced for his better Clearing and Justification, as

hereafter in this Act are permitted and allowed.

4 7ac. 1. c. 1. Sect. 26.

25. A Conspiracy to levy War, held to be Eyidence of Compassing the King's Death; and so a Conspiracy to depose, imprison, or compel him to yield to any Demands by Force, &c. State Tri. 1 Vol. 351. 4 Vol. 137, 178, 182. 3 Vol.

109, 144.

26. And in an Indictment for Compassing the King's Death, where Words are laid as an Overt-Act of High Treason, it was held sufficient to prove the Substance and Effect of the Words laid in the Indictment, and not the very Words. 2 Vol. 73. 3 Vol. 224. But this Resolution smells of the Violence of those Times.

27. So publishing a treasonable Libel held Evidence of Compassing the King's Death. Ibid.

I Vol. 789.

28. So Letters were produced and read as Eyidence of Compassing the King's Death; the Substance whereof only was laid in the Indictment. 2 Vol. 86.

Indichment, were admitted to be proved, &c.

Ibid. 3 Vol. 222.

30. And a Copy of a Paper was admitted to be read in Evidence, tho' not examined by the Original. 1 Vol. 270. See hereafter Chap. 5. of written Evidence, and Chap. 12. of Evidence in

Pleas of the Crown.

31. Altho' the Lord Chief Justice Bridgeman, and some others of the Judges were of Opinion, that those Words of two Witnesses in Case of High Treason were repealed by the Stat. 1 & 2 Pb. & M. c. 10. which enacts, That all Trials

for Treasons be according to the Course of Common Law; and at Common Law one Witness is sufficient for a Jury; (tho' Co. Pl. Cor. and some other Books are against this Opinion;) yet they all agreed, That if that Law for two Witnesses be in Force, yet the same two Witnesses that are to the Indictment may be also Witnesses at the Trial; and the Law doth not require two to the Finding the Indictment, and two others at the Trial. Kelynge 18. But see

now the Stat. 7 W. 3. post, p. 26.

32. The Question, Whether at this Day there needs two Witnesses to convict a Man of High Treason hath grown only upon the Opinion of Co. Pl. Cor. 25, 26. where amongst other Things he delivers an Opinion, that at the Common Law two Witnesses are needful in Cases of Treason. and cites many Books in the Margin; but none of them warrant any fuch Opinion; and there are many Things in his posthumous Books, especially in his Pleas of the Crown concerning Treafons, and in his Jurisdiction of Courts concerning Parliaments, which lie under a Suspicion, whether they received no Alteration, they coming out in the Time of that which is called the Long Parliament; but certain it is there are many Errors in those Places; but as to the main Ouestion, it seemeth to me (i. e. to Judge Keeling) very plain by the express Words of the Statute of 1 Ed. 6. cap. 12. That at the Common Law one Witness was sufficient in High Treason; for the Words of the Statute are, No Person after the first Day of February, then next ensuing, should be indicted, convicted, &c. for any Offence of Treason, &c. unless such Offenders be accused by two sufficient Witnesses; which proveth strongly, as I think, that before that Time one Witness was enough; and in all Cases at Common Law,

Proof by one Witness is sufficient, and no Authority that I can find in any Book is otherwise: fo that I take the Necessity of two Witnesses was introduced by I Ed. 6. and then the Force of that Statute is taken away by 1 & 2 P. & M. c. 10, which, tho' it were in the general a Law which expired with that Queen, being made for Preservation of her Person; yet that Clause in that Statute, That Trials for Treason shall be according to the Course of Common Law, is a perpetual Clause, and restoreth the Common Law as it was before the Stat. 1 Ed. 6, and the Stat. 1 & 2 P. & M. c. 11. which is the next Chapter concerning Treasons in counterfeiting Money, saith, That the Offenders shall be indicted, convicted and attainted by fuch like Evidence, and in fuch Manner as they might have been before the first Year of the late King Edward VI. which points expressly to the Time when two Witnesses were required; and which by this Statute appeareth not to be at the Common Law. Kelynge, p. 49.

33. It was resolved, That if any Overt-Act, tending to the Compassing the King's Death, be laid in the Indictment, that then any other Act which tends to the Compassing the King's Death, may be given in Evidence together with that which is laid in the Indictment. Kelynge 8.

34. All the Judges agreed, That if a Conspirator be examin'd before a Privy Counsellor or Justice of Peace, and upon his Examination, without Torture, consess the Treason; if after at his Trial he deny it, two Witnesses to prove the Consession are good Evidence against him that made the Consession at his Examination aforesaid; and in that Case there needs no Witnesses to prove him guilty of the Treason, for that Consession puts it out of the Statute, which requires two Witselfes

Witnesses to prove the Treason, unless the Party shall, without Torture, confess the same; and the Confession there spoken of, is not meant a Confession before the Judges at his Trial, but a Confession upon his Examination: (2.) But such Confession so proved, is only Evidence against the Party himself, who made the Confession, but cannot be made Use of as Evidence against others, whom, on his Examination, he confessed to be Accomplices in the Treason. Kelynge 18.

35. The Examination of the Prisoner himself (if not on Oath) may be read as Evidence against him; but the Examination of others (tho' on Oath) ought not to be read, if they can be produced Viva voce. St. Tr. 1 Vol. 169, 780. 2 Vol. 575.

36. For the Examination of a Witness ought not to be read where the Witness himself may be produced. I Vol. 302, 318. Sed vide contra Ibid. 26, 43, 87, 100, 137. 3 Vol. 54. 4 Vol. 63 or 363. See Depositions of a sick Person absent, read. I Vol. 255, 227.

37. If a Witness going to Sea be by Rule of Court examin'd on Interrogatories before a Judge, and the Trial come on before he is gone, his Deposition shall not be read; but he must appear, &c. for the Rule was made on a Supposal of his Ab-

fence, &c. 2 Salk. 691. Vide poft, p. 31.

38. All the Judges agreed, That a Confession upon Examination before a Privy Counsellor, tho' he be not a Justice of Peace, is a Confession within the Meaning of the Statute; and the rather, as my Lord Bridgeman said, because Justices of the Peace were not enabled to take Examinations before the Stat. 1 & 2 P. & M. c. 13. Kelynge, p. 19.

39. To say Truth, we never read in any Act of Parliament, antient Author, Book-Case, or Record.

Record, that in Criminal Cases, the Party accufed should not have two Witnesses sworn against him: and therefore there is not fo much as Scintilla Juris against it. Co. 3 Inft. 79. But Note:

40. By an Act 7 W. 3. cap. 3. for the Regulating of Trials in Cases of Treason and Mispri-

fion of Treason, 'tis enacted,

'That all Persons prosecuted for High Treafon or Misprision of Treason, shall be admitted to make any Proof that he or they can produce, by lawful Witness or Witnesses; who fhall then be upon Oath for his or their just Defences in that Behalf. 7 W. 3. c. 3. Sect. 1. 41. 6 And it is further enacted, That from and after the faid twenty-fifth of March, in the Year of our Lord 1696, no Person or Persons whatfoever shall be indicted, tried or attainted of High Treason, whereby any Corruption of Blood may, or shall be made, to any such Offender or Offenders, or of Misprisson of such Treason, but by and upon the Oaths and Testimony of two lawful Witnesses, either both of them to the same Overt-Act, or one of them to one, and the other of them to another Overt-Act of the same Treason, unless the Party indicted and arraigned, or tried, fhall willingly, without Violence, in open Court, confess the same, or shall stand mute, or refuse to plead; or in Cases of High Treason, 6 shall peremptorily challenge above the Number of Thirty-five of the Jury; any Law, Statute, or Usage to the contrary notwithstand-

42. And be it further enacted and declared by the Authority aforesaid, That if two or more

ing. 7 W. 3. c. 3. Sect. 2.

distinct Treasons, of divers Heads or Kinds, fhall be alledged in one Bill of Indicament, one

Witness

Witness produced to prove one of the said Trea-

fons, and another Witness produced to prove another of the said Treasons, shall not be deemed

or taken to be two Witnesses to the same Trea-

fon, within the Meaning of this Act. Sect. 4.

And that all and every Person and Persons fo accused and indicted for any such Treason,

as aforefaid, shall have the like Process of the

Court where they shall be tried, to compel their

Witnesses to appear for them at any such Trial

or Trials, as is usually granted to compel Wit-

nesses to appear against them. Sect. 7.

And be it further enacted, That no Evidence fould be admitted or given, of any Overt-Ast that is not exprestly laid in the Indistment against

any Person or Persons what soever.

Provided always that this Act, or any Thing therein contained, shall not any Ways extend to any Impeachment or other Proceedings in Par-

f liament, in any Kind whatfoever.

Provided also that this Act, or any Thing therein contained, shall not any Ways extend to an Indictment of High Treason, or to any Proceedings thereupon, for counterfeiting his Majesty's Coin, his Great Seal or Privy Seal, or his Sign Manual or Privy Signet. 7 W. 3. c. 3. Sect. 4, 7, 8, 12 & 13.

43. In an Act I Ann. Self. 2. cap. 9. for the Punishment of Accessaries to Felonies and Receivers of stolen Goods, and to prevent wilful burning and destroying of Ships, there is this Clause.

And be it further enacted by the Authority aforesaid, That from and after the twelfth of February 1702, all and every Person and Persons who shall be produced, or appear as Witness or Witnesses, on the Behalf of the Prisoner, upon any Trial for Treason or Felony, before

before he or she be admitted to depose, or give any Manner of Evidence, shall first take an Oath to depose the Truth, the whole Truth, and nothing but the Truth, in such Manner as the Witnesses for the Queen are by Law obliged to do; and if convicted of any wilful Perjury in such Evidence, shall suffer all the Punishments, Penalties, Forseitures and Disabilities, which by any of the Laws and Statutes of this Realm are, or may be, inflicted upon Persons convicted of wilful Perjury.

Anno primo Annæ Reginæ, Sesse 2. c. 9. Sect. 3.

By Stat. 6 Geo. 1. c. 23. Sett. 6, 7. The Certificate of the Clerk of Assize or of the Peace, is to be sufficient Evidence of a Person's being convicted and order'd to be transported, so as to make him guilty of Felony, (sans Clergy) if after found at Large in the Kingdom, &c. See also Stat 10 Geo. 1. c. 4. set. 15. of Certificates to be allowed as a Proof of having taken the Oaths to the Government.

44. By an Act 5 Eliz. c. 9. for the Punishment of such Persons as shall procure or commit any wilful Persury, 'tis provided,

That if any Person or Persons, upon whom any Process out of any of the Courts of Record within this Realm, or Wales, shall be served to testify or depose concerning any

Caufe or Matter, depending in any of the fame Courts; and having tendred unto him or

them, according to his or their Countenance or Calling, such reasonable Sums of Money

for his or their Charges, as having Regard to the Distance of the Places, are necessary to be allowed in that Behalf, do not appear ac-

cording to the Tenor of the faid Process, ha-

ving not a lawful or reasonable Let or Impedi-

" ment

ment to the Contrary, that then the Party in making Default, to lose and forfeit for every

fuch Offence to l. and to yield fuch further Recompence to the Party grieved, as by the

Discretion of the Judge of the Court, out of which the said Process issued, shall be awarded,

according to the Loss and Hindrance that the

Farty which procured the faid Process shall fustain, by Reason of the Non-appearance of

the said Witness or Witnesses; the said seve-

ral Sums to be recovered by the Party fo grieved, against the Offender or Offenders, by

Action of Debt, Bill, Plaint or Information,

in any of the Queen's Majesty's Courts of Record, in which no Wager of Law, Essoin, or

Protection shall be allow'd. 5 El. c. 9. Sect. 12.

Apprentices Indentures, in Order to be given in Evidence, &c. viz. Stat. 6 Geo. 1. cap. 11. 7 Geo. 1. c. 20. 8 Geo. 1. c. 2. 10 Geo. 1. c. 2, &c.

46. He who has a Subpana to give Evidence, may have a Writ of Privilege, to protect him

going and coming. I Ven. 11. Anonymus.

47. If a Witness, coming to testify in a Cause in Middlesex, be arrested in London, by one knowing the Cause, he hath no Remedy but by Habeas Corpus, to examine and deliver him thereby; but if there be any Contempt by the Officer, &c. an Attachment may afterward be awarded against him; for they are as well to have Privilege as the Parties. 1 Keb. 223. Vandevelde versus Lluellin.

48. The Court was moved to discharge one Cullins, that was arrested as he was attending the Court to give Testimony, as a Witness in a Cause, and for an Attachment against the Parties that did arrest him. Germain Justice, absente

Roll Chief Justice. Take a Supersedeas, and let the Parties shew Cause why an Attachment shall not be granted against them that arrested him.

Style 395. Anonymus.

49. Examination of Witnesses cannot be by Confent of the Parties before any Judge that is not of that Court, out of which the Cause went to the Affizes, by Twisden and Foster; because the Depositions are not taken before him, as Judge of Affize, but as Judge of this Court: Contra by Windham ! But per Cur', tho' one confent to have a Letter read, yet the Jury, on Pain of Attaint, are not bound to find it; therefore it was agreed, That a Bill should be exhibited in Chancety, and answered, and Commisfioners by Confent, go out thence into the Country to examine such Witness in the Country, whereby the Depositions may come in hither judicially. 1 Keb. 249. Frankland versus Savill.

Witnesses now in Town, living in Wales, could not be had at the Assizes; yet Hide refused to examine them by Consent of Parties, as is used in C. B. 1 Keb. 787.—against Kelly; vide infra.

fes by Interrogatories out of the Term, by Foster Chief Justice, is extrajudicial and not to be allowed, though the Party consent. Contrary by Twisden and Wyndham, Consensus (if according to Law) tollit errorem: And the Court may as well allow the Examination of Witnesses before a Judge by Depositions, as read the Affidavit of a Person absent: This is no more than the Law allows. 1 Keb. 36. Blake versus Page.

52. But the Law seems to be now settled, that the Assidavit or Deposition of a Person absent cannot be read in Evidence to a Jury, i. e. if the Witness himself can be produced in Person. Vide ante.

or Death, it feemeth reasonable to admit the Deposition or Affidavit of such absent Person as E-

vidence. Vide ante, and post, Chap. 5.

54. The Defendant prayed the Trial might be stayed, on Suggestion that his material Witnesses were Mariners, and now going to Sea with the Fleet, and would not be ready till Michaelmas-Term next. The Court agreed to examine the Witnesses by Consent of Parties before the Chief Justice, the Trial being to be before him; and that the Plaintiff, if he will, may cross-examine them. 2 Keb. 13. pl. 32. Cathin versus Pidgeon. Vide ante, p. 25.

55. A Prisoner may not call Witnesses to disprove what his own Witnesses have sworn. State Tri. 2 Vol. 764. And note; This Rule of late has

been extended to Civil Cases. Sed Quære.

56. What was done at another Trial, cannot be given in Evidence till the Record of the Trial is produced. 3 Vol. 326.

57. Where the Record of the Conviction of an Accomplice shall be read in Evidence or not.

3 Vol. 155.

58. The Court refused to examine Witnesses, whether they were indicted at the Suit of the Defendant for Forcible Entry, but they must shew the Indictment: But by Aleyne they may be asked at large, whether there were no Suits or Differences betwixt them. 1 Keb. 209. The King versus Field.

what J. S. (not concerned, but as Witness in the Suit) said, because J. S. was not on his Oath when be said it. Sed Cur' contra: That it is good Evidence; and on Denial in another Trial in Court by J. S. the Credit is left to the Jury. 1 Keb. 754. pl. 53. Rutter v. Hebden: Yet Keeling's Opinion seems most just.

60. Evidence given at a former Trial, and between other Parties, &c. is not Evidence in another Trial, &c. See State Tr. 2 Vol. 354, 3804

385.

61. No Evidence ought to be given of what an Accomplice has faid, especially if not in the same Indictment. *Ibid.* 2 Vol. 436. But note; one indicted for the same Crime cannot be a Witness. *Ibid.* 2 Vol. 610.

62. Yet a Prisoner may bring Evidence to prove the Witness gave a different Testimony before a Justice of Peace, or at another Trial: But the Court will not command the Deposition taken before the Justice to be produced for him

to make Use of. 2 Vol. 578.

63. Yet the Examination of a Witness before a Justice of the Peace, was read on Behalf of the Prisoner, i. e. to see if it agreed with his Evidence given in Court. 2 Vol. 596. and see 3 Vol. 668. Such an Examination was read against a Prisoner: Quære legem.

64. Persons indicted of the same Fact, and acquitted, are good Witnesses for others charged

with the same Crime. 2 Vol. 147.

65. And 'tis held, That Accomplices may be Witnesses in Treason (though they confess their Guilt) if they are not indicted of the same Fact. See 1 Vol. 59. 2 Vol. 492, 610. 3 Vol. 117, 136. 4 Vol. 10, 26.

66. In

66. In an Appeal Issue being taken, whether commorant at Greenwich or Woolwich, the Appellee offered to prove, that he had been indicted by that Addition, and had pleaded to the Felony: But per Cur', it cannot be; for the Evidence for or against the Parties on the Indictment, is not Evidence now, no more than Evidence on Indictment of Trespass is Evidence in an Action of Trespass; nor would they fuffer the Appellee to give in Evidence what was given in Evidence on the Indictment by one now dead; contrary to the Opinion of Twisden. and to the Practice in other Cases: Nor would they allow the Evidence given for the Party on the Indictment without Oath. 2 Sid. 234. Samp-Son versus Tothill.

67. Sir John Jackson was convicted on an Information for preventing of Evidence to be given on an Indictment of Perjury against Fenwick and Holt, who had been Witnesses for Sir J. He arrested some Witnesses, and gave Money to others, and so they were acquitted; he was fin'd One thousand Marks, One Month's Imprisonment, and bound to his Good Behaviour for Twelve Months. Hill. 1663. B. R. T. per Pais

i 64. Vide poft.

68. No Evidence of Simony shall be given, unless the Party supposed to be guilty of it be then living, or were in his Life-time convicted of the said Simony at Common Law, or in some Ecclesiastical Court. 1 W. & M. cap. 16. Sect. 2.

69. Testes non possunt Testisicare negative, sed affirmative. 4 Inft. 279.

70. Index non potest esse Testis in propria causa. Ibid.

71. Testibus deponentibus in pari numero, dig-

nioribus est credendum. Ibid.

72. Allegans contraria non est audiendus, verum non toto vero continens est falsum nec vero nec falso. Ibid.

73. Juramentum est indivisibile, & not est admittendum in parte verum, & in parte falsum.

Ibid.

74. Allegans suam turpitudinem non est audien-

75. Jusjurandum inter alios factum nec nocere nec prodesse debet. Ibid.

76. Facultas probationum non est angustanda.

Ibid.

77. Plus valet unus oculatus Testis quam auriti decem. Ibid.

78. Vox Simplex nec probationem facit nec præ-

sumptionem inducit. Ibid.

79. De Crimine in Lupanari commisso, Lupanares Testes esses possunt. Ibid.

80. Qui prodit in scenam (i. e. ad Testificandum)

mercedis erge infamis eft. Ibid.

Lastly, A good Witness should say from his Heart, Non sum Doctus nec instructus (ad Testisicandum) nec curo de victoria modo ministretur Justitia, i. e. I am neither taught or instructed in giving my Testimony; nor do I care who has the Victory, but only that Justice be done to both Parties. Ibid.

CHAP. III.

Of Witnesses that are infamous:

1. NO Witness shall be aspers'd (with Infamy) without Proof. See State Tri. 2 Vol. 107, 318, 419, 512.

2. Nor shall any particular Crime be proved against a Witness, except the Record of his Con-

viction be produced. 3 Vol. 163, 326.

3. Nor shall any one be permitted to swear that he was suborn'd and perjured, &c. (his Infamy excludes his Oath). Ibid. 332.

4. And where the Record of the Conviction of an Accomplice may be read or not. Ibid. 175.

s. If a Person is infamous, he shall not be fworn either as a Juror or as a Witness; for Example: If he be attainted of a false Verdict, or of a Conspiracy at the Suit of the King, or convicted of Perjury, or of a Pramunire, or of Forgery upon the Statute of 5 El. c. 14. (and not upon the Statute of 1 H. 5. c. 3.) or convict of Felony, or has by Judgment loft his Ears. or stood upon the Pillory or Tumbrel, or been figmaticus branded, or the like, whereby he becomes infamous for some Offences; que sunt minoris culpæ, funt majoris infamiæ. If a Champion in a Writ of Right become Recreant of Coward, he thereby lofeth liberam Legem, and becometh infamous, and cannot be a Witness : for regularly he that loseth liberam Legem becomes infamous, and can be no Witness: Or if the Witness be an Infidel, or non sanæ Memoria. or not of Difcretion, or a Party interested, or the like. But oftentimes a Man may be challenged to be of a Jury, that cannot be challenged

lenged to be a Witness; and therefore, tho' the Witness be of the nearest Alliance, or Kindred, or of Counsel, or Tenant or Servant to either Party, (or any other Exception that maketh him not infamous, or to want Understanding, or Discretion, or a Party in Interest) though it be proved true, (2.) it shall not hinder his giving Evidence. But he shall be sworn, and his Credit upon the Exceptions taken against him left to those of the Jury, who are Triers of the Fact, infomuch as fome Books have faid, That though the Witness named in the Deed be named a Diffeifor in the Writ, yet he shall be fworn as a Witness to the Deed. A Witness amongst others named in a Deed was outlawed, and no Process awarded against him by the Statute, yet allowed, tho' he was extra Legem, and an outlawed Person cannot be an Auditor. And the Court in some Books have faid, That they have not feen Witnesses challenged; which is regularly to be underflood with the Limitations abovefaid; but fuch as are returned to be of a Jury, are to be challenged for the Causes aforesaid, for Outlawry, and divers other Causes, (for which a Witness cannot be challenged,) and fuch Process against Witnesses is now vanished. But seeing the Witnesses named in a Deed shall be joined to the Inquest, and shall in some Sort join also in the Verdict, (in which Case, if the Jury and Witnesses find the Deed that is denied to be the Deed of the Party, the adverse Party is barr'd of his Attaint, because there is more than Twelve that affirm the Verdict,) it is Reason that in that Case of joining, fuch Exception shall be taken against the Witness as against one of the Jury, because he is in the Nature of a Juror. And therefore to put one Example; If he be outlawed in a Perfonal

fonal Action, he cannot be joined to the Jury; but yet that is no Exception against him, to exclude him to be fworn as a Witness to the Jury. And the Reason of all this is, For that if he with others should join in Verdict with the Jury in Affirmance of the Deed, the Party should be barred of his Attaint. But note; There must be more than one Witness, that shall be joined to the Inquest. And albeit they join with the Jury and find it not his Deed, notwithstanding this Joining, the Party shall have his Attaint; for it is a Maxim in Law, That Witnesses cannot testify a Negative but an Affirmative. And if one of the Witnesses named in the Deed be one of the Panel, he shall be put out of the Panel, and all these Secrets of Law do notably appear in our Books. To shut up this Point it is to be known. That when a Trial is by Witnesses, regularly the Affirmative ought to be proved by two or three Witnesses; as to prove a Summons of the Tenant, or the Challenge of a Juror, or the like. But when the Trial is by Verdict of twelve Men, there the Judgment is not given upon Witnesses, or other Kind of Evidences; but upon the Verdict, and upon fuch Evidence as is given to the Jury they give their Verdict. Co. Lit. 6. b.

6. Men that are so branded with Infamy, that they cannot be Jurors, cannot be Witnesses; yet per Glyn Chief Justice, and Newdigate Justice, 1657. B. R. Conviction of Common Barratry hinders not from being a Witness; but Maynard Serjeant held strongly against it. T. per Pais 160.

7. Note; In the Case of The King vers. Ford, 2 Salk. 690. 'Twas argued that a bare Conviction of Perjury would take away one's Evidence, because 'tis an infamous Crime; not so of Barratry,

D 3

which

which was not of an infamous Nature, without an infamous Punishment were inflicted, as the Pillory, &c. But the Court held contra; and that it was not the Nature of the Punishment, but the Nature of the Crime, and the Conviction thereof that created the Infamy: And per Holt Chief Justice, if one be convicted of Perjury on the Statute, he cannot be restored to his Credit by the King's Pardon; for by the Statute, 'tis Part of the Judgment that he be infamous, and lose his Credit, &c. but he may be restored to his Credit by a Statute-Pardon: But in Indictments of Perjury at Common Law, the Infamy is only the Consequence of the Judgment; and therefore the King's Pardon in fuch Cases restores the Party to his Credit. Vide post, cap. 8. 2 Salk. 514.

8. At Lent Affizes Suffolk 1657. St. John Chief Justice of C. B. would not allow one that had been whipp'd for Petty Larceny to be a Witness. But Earl Serjeant said, they ought to be stigmatized that are disabled from being Witnesses. Ibid.

9. By Rolle Chief Justice, one that has been burn'd in the Hand for Felony, may notwithstanding be a Witness in a Cause; for he is in a Capacity to purchase Lands, and his Fault is purged by his Punishment. Style 388. Anonymus.

ken to one of the Witnesses, viz. Dr. Spicer, because he had stolen Plate, and had been pardoned for it. But notwithstanding the Exception, the Court did allow of the Testimony of the said Dr. Spicer, Noté; It did not appear in the Case of Fines, the principal Case, whether the Pardon, by which Dr. Spicer was pardoned, were a General Pardon, or whether it were a Parti-

Particular and Special Pardon. Godb. 288.

Henry Fine's Case.

II. In a Prohibition upon a supposed Modus Decimandi, Telverton Solicitor, moved the Court for a Consultation to be granted, for that the Plaintiff in the Prohibition had not sufficiently proved his Suggestion, the same being only proved by two Persons, which were both of them attainted of Felony, and fo could be no good and fufficient Witnesses in the Law. Coke Chief Justice, It appears by 11 Hen. 4. fol. 41. b. that if one be attainted of Felony, and pardoned, he shall not after be sworn of a Jury, for that he is not probus & legalis Homo, for Pana mori potest, culpa perennis erit; and therefore fuch a one shall not be sworn of an Inquest: And this is a good Challenge to a Juror returned to ferve, That he hath been before attainted of Felony and though pardoned for the same, yet he is not a fit Person to serve on a Jury, nor yet to be an indifferent Witness; and by the same Reason, the Testimony of such a one for a Witness in all Cases, is to be rejected, and upon the same Reason, I will not take the Testimony of a Recufant convict for a Witness: For by the Statute of 3 fac. c. 5. a Popish Recusant being convict of the same, is to be excommunicated, and fo to be taken as an excommunicated Person; and in this principal Case, upon Examination it was found, that the two Witnesses, which proved the Suggestion for the Prohibition, had been attainted of Felony; and therefore by the Rule of the Court, the Prohibition was difallowed (the Suggestion being unduly proved) and a Confultation was granted. 2 Bul. 154. Brown verfus Crasbaw. orise at orbal odd or duon

E-Shirte

12. Elizabeth Celier was tried at the Bar, upon an Indictment for High Treason. Upon Not guilty pleaded, there was one Person who came against her as a Witness, who was the then Profecutor Thomas Dangerfield, against whose Evidence the Prisoner excepted, for that he had been feveral Times convicted of Cheating, and had been fet upon the Pillory, and had been whipped, and was of very little Credit, and then he would have produced a Pardon of these Offences; but she produced a Copy of a Conviction of a Felony, for which he was burnt in the Hand, which was out of that Pardon; and also an Outlawry for another Felony, which was likewise out of that Pardon; and so his Testimony was fet aside. And it was debated, That admit a Witness be convicted of Felony, and afterwards pardoned, whether he shall be thereby restored to be a good Witness? And my Lord Chief Justice Scroggs and my felf were of Opinion, That he could not, because the Pardon doth take away the Punishment due to his Offence, but cannot restore the Person to his Reputation; and of that Opinion was Justice Nichols in Cuddington and Wilkin's Cafe, Mo. 872. pl. 1213. But my Brother Jones and Dolben contra, and so afterwards did I conceive; for in the Case of Cuddington and Wilkins, as 'tis reported in Hobart, 'tis faid, That the Pardon takes away not only panam but reatum. Another Queston was stated, viz. Whether a Man convicted and burnt in the Hand be stigmatick as to his Testimony? And Jones held that he was not, because the Burning in the Hand is no Part of his Judgment, and is by 4 Hen. 7. c. 13. only to notify to the Judge that he had his Clergy before. 5 Cq. 50. a. Biggin's Case. But I have examined

mined that Case, and do find that no Judgment was given therein, but compounded, as 'tis reported both by 3 Cro. 682. and Moo. 571. pl. 782. and Croke fays, there were two Judges against two, and Moo. fays it was agreed, the King could not pardon the Burning of the Hand in an Appeal. And in Truth it feems to me to be Part of the Judgment ; for the Entry is, Ideo consideratum est quod le Offender cauterizetur in manu sua læva, Rast. Ent. 1. b. C. 56. a. But upon the whole Matter it appears by Heston's Case cited in Foxley's Case, 5 Co. 110. a. that the Burning of the Hand is (by Virtue of 18 Eliz. c. 6. which fays, he shall be forthwith enlarged,) in Nature of a Pardon, and the Prisoner is thereby cleared from the Offence, and confequently he is a good Witness, and not stigmatick. Sec Hob. 292. Searl versus Williams. Raym. 369. Rex versus Celier.

13. The Earl of Castlemain was indicted for High Treason, and there were only two Witnesses who offered materially to depose against him, and they did depose very positively, as to his attempting to procure fome to kill the King; the Witnesses were one Dr. Titus Oates, and one Thomas Dangerfield. Upon the Evidence of Dangerfield, who had been found guilty upon feveral Indictments, one of Felony, for which he had his Clergy, and was burnt in the Hand; upon other Indictments he had been fet upon the Pillory for cheating, but had obtained his Pardon under the Great Seal for all the faid Offences; a Question did arise, whether he might be a Witness? and thereupon the Prisoner did defire to have Counsel affigned him; and it was granted; and Mr. Daniel, one of his Counsel, urged, That Dangerfield ought not to be a Witnefs.

ness, for that he was blemished, and the Pardon had not restored him to his Testimony; and cited 2 Brownl. 47. where it is faid, That the King pardoned a Man attaint for giving a falfe Verdict, yet he shall not be at another Time impanelled upon any Jury; for though the Punishment was pardoned, yet the Guilt remains. 2 Bul. 154. Brown verf. Crashaw. In a Prohibition the Suggestion was proved only by two Persons attainted of Felony. And Coke Chief Justice cited, Hill. 11 H. 9. 41. b. pl. 7. That if a Man be attainted of Felony and pardoned, he shall not afterwards be fworn upon a Jury, because he is not probus & legalis bomo. But the Court willing to be throughly satisfied, fent me to the Court of Common Pleas, to know their Opinions in this Point. And the Judges there resolved, That the Burning of the Hand was quafi a Statute-Pardon as to the Felony; and as to that he was a good Witness, and the Pardon made him a good Witness as to the other Offences: But they faid. That had he not been burnt in the Hand. the Pardon would not have restored him to his Credit again, because in his Testimony the People are concerned, and confequently the Pardon will not deprive them of their Interest, and thereupon we allowed him to be a good Witness. And with the Opinion of the Judges of the Common Pleas, as to the Burning of the Hand, agree the Books of 5 Co. 110. a. Hefton's Case; and Hob. 292 & 67. Cuddington and Wilkin's Cafe; but Moo. 872. fays, That Justice Nichols was of Opinion, That if the Plaintiff had been convicted, the Judgment would have been otherwise. And upon the whole Evidence, the Defendant was found Not guilty. Raym. 379. Dom' Rex versus The Earl of Castlemain.

14. In Evidence upon an Information of Perjury, it was observed, That one indicted of Perjury may be a Witness in the same Point, upon Trial betwixt others till Conviction; as Sir Edward Powell's Case. I Keb. 289. Rex versus Dawson.

15. A Pardon of Felony, tho' after the Burning of the Hand, makes one a Witness, not so

of Perjury. 1 Ven. 349. Anonymus.

16. At the Trial of a Prisoner, he took Exception against the Witness against him, because he had formerly been burnt in the Hand for Felony: But the Chief Justice Kelynge, and Wylde Recorder, being present, held that to be no Exception, and in Civil Causes such Persons are frequently admitted for Witnesses; and it differs from Cutting off Ears, Standing in the Pillory, or other Stigmatizing, because those Punishments make the Person infamous, and so he is not allowed for a Witness: But Burning in the Hand does not fo, because it cometh in the Place of Purgation at Common Law, which supposeth he might not be guilty notwithstanding the Verdict. And therefore at the Common Law, he that confess'd a Felony, could never be admitted to his Purgation; for there could be no Prefumption of Not guilty against his own Confesfion. Vid. Godb. 288. Kelynge 38.

17. A Witness was convicted of Perjury, which by the Death of the Protector was kept from Judgment; and therefore 'twas no Exception against his Testimony, which made the Plaintiss's Counsel offer it against his Credit after his Testimony given. Per Cur', This Verdict being nulled, it cannot now be given in Evidence either to disable or disparage his Reputation; for it is but an Information, and must be proved

de novo by Witnesses: But by Aleyn, had the Verdict been desective in Point of the Drawing, yet it might have been given in Evidence. Fitz versus Smalbrook. 1 Keb. 134. Pl. 60. S. C.

Ray. 32.

18. Exception was taken to a Witness, that he was convicted of Perjury, and they offer'd a Copy of a Verdict, on which there was never any Judgment, in Oliver's Time. But the Court would not admit the Evidence, because all is discontinued by the Alteration in the Government. But it was agreed that Evidence might be given Viva Voce, to prove him perjur'd; the other Side, to establish the Witness's Credit, produced a Pardon of the Perjury: But per Cur', that will not do, for it cannot restore him to his Credit. 2 Sid.

51. Wickes verfus Smallbrook.

19. Crosby was indicted for High Treason, and at a Trial at Bar, Aaron Smith was ready to give Evidence against the Prisoner, when he produced the Record of Smith's Conviction and Judgment to stand in the Pillory, and he had stood in it, which his Counsel objected made him infamous, and disabled him to be a Witness. Ward, Attorney General: This does not take away his Evidence; the Cause, for which he was convicted, was only giving Instructions to Stephen College, to be used by him upon his Trial; but there was no Publication of them, and it was not a Cause that deserved the Pillory. Holt Ch. Just. The Cause is not material, if the Court had a Turifdiction; if he stood on the Pillory, and suffer'd an infamous Punishment, the Question is, If he be a good Evidence? Trevor, Solicitor General: 'Tis not the Putting in the Pillory, but the Fact for which he was convicted, takes away his Evidence, as Perjury, and not a Libel only,

as here. Holt Chief Justice: 'Tis the infamous Punishment, and not the Cause: (Q.) If one is convicted of Perjury, and stands in the Pillory for it: if he gets a Patent of Pardon, it does not restore him to his Liberam Legem: Here has been a General Pardon. The Pardon does not revive his old Credit, but it gives him a new one. If one attainted of Treason is pardoned, it makes him a good Witness, tho' before the Pardon he could not be fo; but where a Man lies under a civil Difability, without any Conviction, the King cannot pardon that; but where there is a Conviction for a criminal Offence, the King can pardon, tho' not to restore him, but to give him Credit for the Future: This is the same Disability as is on a Judgment on Villenage or Attainder, and it is every Day's Practice to allow them to be Witnesses after Pardon; the Disability is as much a Consequence on one as the other, and the General Pardon dischargeth the Offence. I will not give any Opinion now as to the first Point, whether he had been a good Evidence without a Pardon; but I take it that the General Pardon makes him a good one, and has taken off the Difability; for it not only takes away the Crime, but the Disability too; & per Eyre Justice, he was allowed to give Evidence, but the Jury acquitted Crosby. 5 Mod. 15. Rex versus Crosby. See 2 Salk. 689, 690. and 3 Lev. 426, 427. S. C.

20. An Information for Perjury set forth, That the Defendant on giving a Lease and Release in Evidence, dated 15 and 16 July 1681. executed at Albemarle-house, to which Mr. Strond was a Witness, swore, that Mr. Strond was in the Middle of July 1681, at Newnham, innuendo Newnham in Devonshire; whereas in Truth he was not at

Newnham

Newnbam aforesaid; a Verdict was for the King! But Judgment was arrested, and it was held,

I. That Newnham was but an Individuum Vagum without the Innuendo, and might be as well
Newnham in Middlesex as Newnham in Devonshire, or some far distant Place; and if Newnham was at the next Door, Mr. Stroud might be
at Newnham and at Albemarle-bouse in Middlesex

too, in the Middle of July.

2. That the Innuendo could not restrain the Individuum Vagum to Newnham in Devonshire; for its no Averment, but only in Nature of a Pradict': It may serve for an Explanation to point out or ascertain where there is precedent Matter, but can never make a new Charge; it may imply what is already expressed, but cannot add to, or enlarge or change the Sense of precedent Words: So here the Word Newnham did not import Newnham in Devenshire, ergo the Innuendo cannot inlarge the Importance of it. (See the Books there cited).

3. That a Man ought not to be drawn into a constructive Perjury, and that if the Matter of this Oath had been certain, it was (2) material to the Issue, and sufficient to be Perjury. And Holt Chief Justice denied Goldsb. 191. and held, That if a Man gives Evidence to the Credit of a Witness, tho' this be not the Issue, it is yet

Perjury.

4. As to the Objection that this was an Information at Common Law, and not upon the Statute, that makes no Difference as to the Certainty of the Charge, for Perjury is no more infamous now, than it was at Common Law; the Difference is only, That where A. is convicted on the Statute, 'tis Part of the Judgment to be dif-

disabled; but if at Common Law, 'tis only a confequential Disability; and therefore the King in the later Case may pardon, and that will restore him to his Testimony; 'tis otherwise in the former Case, for there he must reverse the Judgment, or he cannot be restored. The King vers. Greepe, 2 Salk. 513. See Chap. 8. Numb. 30. The

Case of The King and Ford.

21. Davis and Carter being convicted for forging a Bill under the Seal of the Bank of England, and having stood in the Pillory for it, were now brought up to the King's Bench, and prayed they might be turned over to the Marshallea, because the Sheriff of London oppress'd them in Newgate: where they were detained till they paid the Fine, &c. and their own Affidavits were offer'd to prove the Oppression. Chief Justice: (See Co. Lit. 6. b. & Hale's Pl. Cor.) If a Man has had an infamous Judgment, and has stood in the Pillory for an Offence, which is contrary to the Faith, Credit and Trust of Mankind, as Forgery is, he cannot be a Witness in any Cause. Hale faith, If he hath flood on the Pillory, he cannot be a Witness; but that is to be underflood for an infamous Judgment: But if a Mars be convicted for a Libel, and has stood on the Pillory for it; yet perhaps he may be a Witness. Shower: Canning, who was convicted for a Libel, and stood in the Pillory, was allowed to be a Witness before the Delegates, my Lord Chief Justice Treby, and other Judges being there; and fo Aaron Smith was an Evidence in Crosby's Case. Chief Justice: Aaron Smith was pardoned, and we gave no Opinion to this Point; but, for my Part, I don't understand the Nature of his Offence; it was only for giving Stephen College Notes how to defend himfelf on his Trial.

In the principal Case the Affidavits were not read; but the last Day of the Term, the Court order'd the Sheriffs to return the Money which they had taken from them, and remanded them to Newgate. 5 Mod. 74. The King versus Davis & Carter.

before, what Verdict he will give; or for having given Counsel to one of the Parties, may notwithstanding be sworn as an Evidence; otherwise of him who is challenged for taking of Money, or the like, that goes to his Credit and Honesty. Brook's General Issue, 65. 49 Ass. 1.

23. One outlawed shall not be called probus & legalis Homo. One attainted in an Attaint shall never be sworn in any of the King's Courts; and shall not wage his Law in Debt. 32 Hen. 6.

32 8 33 H. 6. 55.

24. It was refolved by all the Judges, That those Prisoners who were equally culpable with the Rest, may be made Use of as Witnesses against their Fellows, and they are lawful Accufers, or lawful Witnesses within the Stat. I Ed. 6. 12. 5 & 6 Ed. 6. c. 11. & 1 Mar. 1. And accordingly at the Trial of these Men, some of their Partners in the Treason were made Use of against the Rest; for lawful Witnesses within those Statutes are fuch as the Law alloweth: and the Law alloweth every one to be a Witness who is not convicted, or made infamous for fome Crime: And if it were not fo, all Treafons would be fafe; and it would be impossible for one, who conspires with never so many others, to make a Discovery to any Purpose. But the Lord Chief Baron Hale said, That if one of these culpable Persons be promised his Pardon, on Condition to give Evidence against the Rest,

that disables him to be a Witness against others, because he is bribed, by saving his Life, to be a Witness; so that he takes a Difference where the Promise of Pardon is to him for disclosing the Treason, and where it is for giving Evidence. But some of the other Judges did not think the Promise of Pardon, if he gave Evidence, did disable him; but they all advised that no such Promise should be made, or any Threatnings used to them in Case they did not give full Evidence. Kelynge 18.

25. In Trespass against A. one B. was admitated to give Evidence against him, though by his own Confession he was a Joint-Trespasser, and by his Oath did cast the Damages upon his Companion: And so freed himself in a Manner.

Clayt. 115. Anonymus.

26. De Crimine in Lupanari commisso, lupanares

Testes effe poffunt. 4 Inft. 279.

27. The Vendor, the Particeps Criminis, was allowed to be a Witness, on Information on 13 & 14 Car. 2. c. 15. T. Jones 155. Rex versus

Benifon.

28. An Action on the Case against Gary, for tescuing a Person arrested on mean Process, as the Plaintiff's Suit: The Party rescued appear'd, and was sworn as a Witness for the Desendant, not being made Party to the Action: Which Holt Chief Justice basicanter allowed, upon the Reason that he swore to charge himself, if by his Evidence he discharged the Desendant; but said, it was what he never had seen before, and that if the Desendant was guilty of the Rescous, he could not but be Particeps Crimitals: However, he was sworn; and his Credit left with the Jury. 6 Mod. 211. Wilson versus Gary.

Buch

29. A Man attainted of Piracy is not a good Witness to prove another Guilty or Not guilty of Piracy. Paf. 15 Fac. 1. B. R. per Cur'. Wood-ford's Cafe, 2 Rol. A. 696. Pl. 2.

so. If a Man on his Examination accuse another of Piracy, and after he himself is attainted of Piracy, and after being pricked in his Conscience, sends for that Party he accused, and acknowledges before Witnesses that it was a false Accusation, and by the Procurement of another Person; yet this Confession shall not be admitted to weaken the Evidence he gave before his Attainder, because it was made by him after his Attainder. Pasch. 15 Jac. 1. B. R. Woodford's Case, per Cur' prater Dodderidge, who feem'd to be of another Opinion. 2 Rol. A. 686. Pl. 3.

31. See hereafter Tilley's Cafe. What Proof shall be allowed, or not, to make one Non compos. Cases in Law and Equity, 1 Part 59.

refound a factor strekell on theart better at the Wallett Court of the Tale of the section and the Witnesday Chilly (All Deepley all Constitutions of the

The fair which are a south the second and the

The same all the same as the same happens of the same and the Light of not provention as a whole of the loss sectored, of rad to the lary leading

the venet has a contract this was a state

CHAP. La mid 1957 Age 1 Plous to the section of the secti

Abunch and troyer another success or block the prid had the CHAP. IV. To Have the

Of Witnesses that are interested in the B side went of the Causei should not be the manufacture of the standard banks

i. NOTE; By Treby Chief Justice, an Heif apparent may be a Witness concerning the Title of the Land; but a Remainder Man cannot, for he hath a present Estate in the Land ! but the Heirship of the Heir is a mere Contina gency. Also where there is a Tenant in Tails Remainder in Tail, he in Remainder cannot be a Witness concerning the Title of those Lands for he hath an Estate therein, fuch as it is. i Salk. 283.

2. A Witness ought not to be examined where his Evidence tends to clear or accuse himself of a Crime. See State Tri. 1 Vol. 310, 323. 2 Vol. 319. 3 Vol. 224. 4 Vol. 31. Yet an Approver of an Accomplice may be a Witness till he is indicted. 1 Vol. 606, 619, 782. 2 Vol. 377, 492.

3 Vol. 117, 136. 4 Vol. 10

3. How far a Witness that swears, to procure his Liberty, may or may not be credited, fee

Farefly 119.

4. The Parson of a Parish is not to be admitted as a Witness to prove the Bounds of his Parifh, because interested in the Tithes, &Bc. Fartfley 63. Quere how far a Parishioner may be ad-

mitted in that Case?

3. In an Action upon the Statute of Hue and Cry by Tirrel, against the Hundred of B. the Defendant pleaded Not guilty, and in Evidence, the Plaintiff, to prove that he was robbed, as he had declared, offered to the Jury his own Oath

Oath, in making good his Declaration, which Anderson and Periam Justices utterly refused. But Wyndbam affirm'd, that fuch an Oath had been accepted in the Case of one Harrington, where the Plaintiff could not have other Evidence to prove his Cause, in respect of Secrecy; for those who have Occasion to travel about their Businefs, will not acquaint others what Money, or other Things they have with them in their Journeys: And we see that in some Causes, the Law doth admit the Oath of the Party in his own Cause; as in Debt, the Defendant shall wage his Law. Periam: That is an antient Law, but we will not make new Precedents; for if fuch Oath be accepted in this Case, by the same Reason, in all Cases where there is Secrecy, and no external Proof, upon which would follow great Inconveniencies: And although fuch an Oath hath been before accepted of, and allowed here, yet the same doth not move us; and we see no Reafon to multiply fuch Precedents. The Declaration is, That the Plaintiff was robb'd of 101. de Denariis ipsius Querentis; and upon the Evidence it appeareth, that the Plaintiff was the Receiver of the Lady Rich, and had received the faid Money for the Use of the said Lady; and Exception was taken to it by Shuttleworth; but it was not allowed; for the Plaintiff is accountable to the Lady Rich for the faid Money. And it was agreed, That if he who was robbed, after he hath made Hue and Cry, doth not further follow the Thieves, yet his Action doth remain. 2 Leonard 82. Tirrel and The Hundred of B.'s Case, S. C. 4 Leon. 51. S. C. Goldsb. 24.

6. In an Action on the Case for managing the Desendant's Ship so negligently, that it ran over the Plaintiff's Barge; the Declaration set forth,

That he was possessed of the said Barge laden with divers Goods and Merchandizes. And first, Holt Chief Justice would not suffer the Pilot to be a Witness, because he was answerable, if saulty in Steering, to the Master. Secondly, He would not suffer Damages to be recovered for the Goods, because not set forth particularly, &c. See the Case of Martyn versus Hendrickson,

I Salk. 287.

7. In Trover for Money, the Case was upon Evidence thus: The Plaintiff's Son had a general Authority from his Father to receive and pay out his Father's Money: The Son took a Bill for Money due to his Father, and went and received it without any particular Authority for that Purpose; and this Receipt was with an Intent to imbezil and spend it : But he gave a Receipt as for Money had and received to his! Father's Use; and this Money was given to the Defendant: And the Questions were, First, If the Son could be a Witness in this Case to prove the Delivery to the Defendant: And Secondly, Whether the Father could maintain an Action of Trover for the Money. As to the First, Holt Chief Justice at a Trial at Nisi prius, was of Opinion, That the Son might be admitted as a good Witness, his Testimony being corroborated by other Circumstances; and Secondly, That the Action was maintainable for the Father. See the Reasons of his Opinion, 1 Salk. 289, 290.

8. In an Action against a Hundred, brought by the Master being a Carrier, for a Robbery committed on his Servant in his Absence; Quare, Whether the Master, being Plaintiff in the Action, may be an Evidence to prove that he deliver'd the Money, of which the Servant swears he was robbed, before his Servant went his Jour-

ney in which he was robbed? Because he may prove that by Somebody else; and no Man shall be a Witness in his own Cause, but for the Necessity of the Thing: As if he himself had been robbed, altho' he were Plaintiff, he would have been a good Evidence to prove the Robbery on himself, and of what Sum and Things; and also to prove that he gave Notice to the next Village, and raised Hue and Cry; and this because no other Proof can be had. But the Delivery of the Money to the Servant before the Robbery. and before he went his Journey, may be proved by any other as well as himself; although it was objected, it was neither fafe nor usual for Men to call Witnesses when they deliver Money to carry on a Journey, for Fear of Discovery. And for this Reason per Cur' (against my Opinion) it was ruled. That he ought to be received as a Witness; and he was fworn accordingly. Mich. 1650. Bennet versus The Hundred of Hartford in Com' Hartford. 2 Roll. Abr. 685. Pl. 7. S.C. N. S. P. Style 233.

9. Upon the Statute for Robbery against the Hundred of Osgodfros, it was holden, That the Master may well bring this Action where his Servant was robbed. Now to prove what Money the Servant had, which was 200 l. he was caused to prove he had so much Money deliver'd him, and that he had been formerly trusted by his Master, and had well discharged that Trust; then he proved the Robbery by his Outcries, and that he was wounded in the Assault, and other Badges of such a Fact done: Then it was held, That his own Oath before a Justice of Peace is sufficient within the Statute of 27 Eliz, and no contradictory Proof shall be received against that Oath, that he knew any of the

the Robbers; for when he had once deny'd it upon Oath, this is all requir'd by the Law to enable the Master to bring this Action as to that Point; quod nota. Clay. 35. Wincop's Case.

10. It hath been resolved by the Justices, that the Wise cannot be produced as a Witness either against, or for her Husband, quia sunt due Anime in una Carne; and it might be a Cause of implacable Discord and Dissension between the

Husband and the Wife. 1 Inft. 6. b.

11. The Court was moved to know, Whether the Wife of a Bankrupt can be examin'd by the Commissioners upon the Statute of Bankrupts? And they were of Opinion she could not be examin'd; for the Wife is not bound in Case of High Treason to discover her Husband's Treason, altho' the Son be bound to reveal it; therefore by the Common Law she shall not be examin'd. 1 Browns. 47. Anonymus.

12. In an Indictment profecuted by the Hufband for seducing away his Wife, and keeping her some Time in Adultery; the Wife was admitted to be a Witness against the Desendant, coram Justice Wyndbam, at Lent Assizes at Aylesbury; and the Desendant was sound guilty.

T. per Pais 160.

13. There was a Libel in the Spiritual Court, Causa jactitationis Maritagii; pending that Suit, the Woman exhibited an Indictment in this Court against all the Witnesses who might prove the Marriage, and it was for a Conspiracy by Force and Arms to carry her away against her Will, &c. And the Woman being produced as a Witness, it was objected against her, that she ought not to be allow'd to give her Evidence, because there was a Marriage proved in the Spiritual Court; and where the Consequence of the Evi-

E 4

dence

dence will redound to the Benefit of the Witness, he is always rejected. Curia: Brown was executed for stealing Mrs. Ramsey, and she was allowed to be a Witness in that Case. And in Fullwood's Case upon the Statute of H. 7. the Woman was allow'd to be a Witness; and so she was in this Case. 4 Mod. 8. Rex & Regina ver-

fus Fezas.

14. John Brown was indicted upon the Statute 3 Hen. 7, c. 2. for the forcible taking away and marrying one Lucy Ramsey, of the Age of fourteen Years, having to her Portion 5000 l. He was tried at the Bar, and the Fact appeared upon the Evidence to be thus: She was inveigled into Hide-Park by one Mrs. P. Confederate with Brown (who had prepared a Coach for that Purpose) to take the Air in the Evening, about the later End of May last; and being in the Park, the Coachman drove away from the Rest of the Company, which gave Opportunity to Brown, who came to the Coach-fide in a Vizard Mask, and addressing himself first to Mrs. P. foon perfuaded her out of the Coach, and then pulls out a Maid-Servant there attending Mrs. Ramfey, and gets himself into the Coach, and there detains her until the Coachman carry'd them to his Lodgings in the Strand, where the next Morning he prevails upon her (having first threatned to carry her beyond Sea if she refused) to marry him; but was the fame Day apprehended in the fame House. It was at first doubted, Whether the Evidence of Lucy Ramsey was to be admitted, because she was his Wife de facto, though not de jure? But the Court seriatim deliver'd their Opinions that she was to be admitted a Witness. First, For that there was one continuing Force upon her, from the Beginning till the

Marriage; wherefore whatfoever was done while fhe was under that Violence, was not to be respected. Secondly, As fuch Cases are generally contrived, fo heinous a Crime would go unpunish'd, unless the Testimony of the Woman should be receiv'd. Thirdly, In Fullwood's Case, reported in 1 Cro. (which was read in the Court) the Woman was a Witness, though married, as here; and Rainsford cited my Lord Caftlebaven's Case, where the Countess gave Evidence, that he affifted the Committing of a Rape upon her: But Hale said he was not governed by that Cafe, because there was a Wife de jure : the Evidence being clear to all the Points of the Statute, viz. If, That the Taking was by Force. 2dly, That the Woman had Substance according to the Sta-3dly, That Marriage enfued, tho' it did not appear she was deflower'd; the Jury found him guilty: Whereon Judgment was given, and he was hanged. I Ven. 243. Brown's Cafe, S. C. 3 Keb. 193.

15. In an Indictment against the Lord Andley for affifting B. in the Committing a Rape on his own Wife, 'twas doubted whether the Wife may be produced as a Witness against her Husband; and it was refolv'd by all the Judges, That in the Case of a common Person between Party and Party, fhe could not, according to the Opinion in Coke's first Inft. fol. 6. But between the King and the Party, upon an Indictment, the may, although it concerns the Feme herfelf; as she may have the Peace against her Husband. Hut. 115. Lord Audley's Cafe. See State Tri. 1 Vol. 171. But the admitting of the Wife to be an Evidence against her Husband, hath been divers Times, fince Lord Audley's Case, held to be contrary to Law. See State Tri. 4 Vol. 387.

16. Mary

16. Mary Griggs was indicted upon the Stat. 7 7ac. 1. c. 11. for that she the twenty-eighth of Pebruary 1653, was married to one Nicholas Coats. and that she afterwards, viz. the tenth of October 1650, the first Husband being then alive, marry'd Edward Cage, &c. Upon Not guilty pleaded, the first Husband was produced at the Trial as a Witness to prove the first Marriage; but the Court totally refused to admit of his Testi-mony, and said, That a Wife could not be admitted to give Evidence against her Husband, nor the Husband against his Wife, in any Case, excepting Treason, because it might occasion implacable Diffension, according to 1 Inft. 6. b. and they deny'd the Lord Audley's Case in Hut. 116. to be Law; fo the Profecutor having no other considerable Witness, the Jury brought in the Prisoner Not guilty. Raym. 1. Mary Grigg's Case.

17. In an Information on the Statute of Usury, the Party to the usurious Contract shall not be admitted as an Evidence against the Usurer, for in Effect he then would be Testis in propria Causa, and void his own Bonds and Securities, to discharge himself for the Money he had borrow'd. And although he commonly raises up the Informer to exhibit the Information, yet in Truth he is the Party. Trin. 8 Jac. 1. Smith's Case, per Cur', quod vid. Co. Lit. 6. b. Roll. Abr. 685. Pl. 42.

18. If A. is indicted for Perjury on 5 Elizaments, which was committed in Evidence on an Action brought by B. versus C. In this Case C. who prosecutes the Indictment, and against whom the Verdict was given in the Action, on the Evidence given by A. ought not to be received as an Evidence on this Indictment to prove A. guilty of the Perjury, because by the Statute he is to re-

cover 20 l. he being the Party grieved, and the Indictment being Ad grave Dampnum of the said C. Mich. 1650. Agreed per Cur', Bacon's Case, 2 Roll. Abr. 685. Pl. 4. 2 Sid. Rex versus Poven & alios.

19. If a Man is indicted for an Assault and Battery on J. S. J. S. may be admitted as an Evidence to prove him guilty; because 'tis not the Suit of the Party, but of the King. 2 Roll.

Abr. 685. Pl. 5.

20. An Information was brought against Parris, for that he Fraudulenter & deceptive procured one Anne Wigmore to give a Warrant of Attorney to confess a Judgment. To this he pleaded Not guilty; and upon the Trial it was debated. Whether she might be admitted to give Evidence against the Defendant? For if he were convicted, the Court faid they should fet aside the Judgment. Nevertheless he was sworn, by the Opinion of Three Judges against Twisden; this Suit being for the King. Upon his Trial he was found Guilty, and fined a Hundred Marks, and order'd to come with a Paper on his Hat, expresfing the Offence. I Ven. 49. Parris's Cafe. S.C. 2 Siderf. 431. S. C. 2 Keb. 572. Note; 'Tis faid in Siderfin, That the Judgment was fet aside upon Parris's being found Guilty; and that he was found Guilty chiefly upon the Evidence of A Wigmore.

21. In an Information of Forgery for Publishing a forged Deed, pretended to have been the Act and Deed of one Coke, knowing it to be forged; upon Not guilty pleaded, it appear'd to the Jury upon Evidence, that the said Deed imported a Revocation of the Will, and of a Codicil annexed to the Will of the said Coke, to the Prejudice of the Executors, and sundry Le-

gatees

gatees named in the Will. And it was held per Cur', upon Conference with the Judges of the King's Bench, whom one of the Barons was fent to advise him. First, That a Trustee, who has conveyed over his Estate in Trust, or has affented thereunto, cannot be a Witness for the King in this Case; nor can a Legatee, or any other Person that is a Loser by the Deed, or may receive any Advantage by the Verdict's being found for the King. And for this Dutton and Colt's Case was cited, being a Case in Point in B.R. and it is the same in Case of Perjury: He that is injur'd by the Party, shall not be received as a Witness; because, if the Verdict pass for the King, he will confequentially reap an Advantage by it. But in Case of an Indictment for Battery, he that was beaten may be a Witness, because he can reap no Benefit by the Verdict in another's Suit; and the Cause is of small Moment. But in Case of Forgery, Perjury or Usury, (as appears Co. 1 Inft. fol. 9. b.) the Party grieved may have an Advantage by the Verdict, and therefore shall not be received as a Witness; et iffint le Diversity. It was likewise held, That if Witnesses are examin'd De bene esse before Answer, upon a Contempt, fuch Depositions cannot be made Use of in any other Court, but the Court only where they were taken. The Reason seems to be, because there was no Issue joined, so as there could be a legal Examination; and they were only taken to be read in the Court, in which they were taken, upon a Contempt to that particular Court. Hardress 331. Wats's Cafe.

22. Nota; By Twisden, Justice, it was resolved in one Long's Case, That upon an Information upon the Statute of Usury, he who borrows the Money may be a Witness after he hath paid the Money, but not before. Raym. 191.

Anonymus. Anonymus.

23. The Defendant was indicted for Ufury, for taking 91. for the Use of 451. for a Year, contra formam Statuti. The Case was, The Defendant lent the Profecutor 45 %. upon a Pledge of Jewels, and it was agreed to pay the faid Interest, after the Prosecutor gave his Bond for the fame Money; and the Bond being not discharged, the Profecutor was produced as an Evidence, and was fworn by Holt De bene effe, as he faid. Here Holt declared for Law, That where a Man is interested in the Consequence of that which he fwears for, if it be fo the Doing of the Act, which he is now Evidence to invalidate, or fet aside, was a Means to obtain his Liberty from Imprisonment, or an Exemption from Corporal Punishment, he shall be a Witness, as in the Case of Duress, tho' it be to set aside his own Bond; yet it being given to obtain his Liberty, he shall be a Witness also, where the Nature of the Thing allows him no other Evidence: As if a Woman give a Note or a Bond to a Man to procure her the Love of 7. S. by some Spell or Charm; in an Indictment for the Cheat, tho' it tend to avoid the Note, yet she shall be a Witness. Note; Here it could not be given in Evidence that the Defendant was a common Usurer, because he could not be ready to give an Answer to that Matter. Farresley 118. Dom' Regin' versus Servel, alias Beaus, at Nisi prius soram Holt in Com' Midd'.

24. The Defendant was convicted by the Oath of the Informer, upon the Statute of 13 Car. 2, against stealing of Deer; and Mr. Shower moved that it might be quashed, because the Informer is not to be admitted as a Witness, he being to

have a Moiety of the Forfeiture. The Party to a usurious Contract shall not be admitted as an Evidence to prove the Usury, because he is Teftis in propria Causa, and by his Oath may avoid his own Bond. Mr. Pollexfen contra: The Statute gives Power to convict by the Oath of a credible Witness, and such is the Informer. 'Tis not a material Objection to fay that the Informer shall not be a Witness, because he hath a Moiery of the Forfeiture; for in Cases of the like Nature. the Informer is always a good Witness. As upon the Statute for suppressing of Conventicles, the Informer is a good Witness, and yet he hath Part of the Penalty; for otherwise that Act would be of little Force: For if he who fees the People met together be not a good Witness, no Body else can. Cur': In the Statute of Robberies a Man swears for himself; because there can be no other Witness, and therefore he is a good Witness. 3 Mod. 114. Jennings versus Hankeys.

Witnesses which were Defendants, and which are suppressed by Order of the Court, although that afterwards there be no Proceedings against them, yet they shall not be allowed of at the Hearing of the Cause in that Court. And this was declared to be the constant Rule of that Court. Godb. 438. Huet and Overy's Case in the

Star-Chamber.

26. In Trespass against many, one of the Plaintiff's Witnesses by Mistake was made Defendant, and continued so till the Joining of the Issue; and then on Motion his Name was struck out, that he might give Evidence. 2 Sid. 441. Anonymus.

27. It was moved for the Plaintiff that a Perfon nam'd in the Simul cum, being a material Witness, might be struck out, and it was granted. Kelynge said, That if nothing was prov'd against him, he might be a Witness for the De-

fendant. I Mod. 11. Anonymus.

28. Twas held by the Court, That if one has Cause of Action against J. S. and brings Action against J. S. and several others, against whom he has no Cause of Action, by Covin to take away their Evidence; if it should so appear upon the Evidence, the Judges may and ought to allow them to be Witnesses: And so it was done in this Court in a Case where Dimoke and others were the Defendants. Savil 34. Clay. 37. Crestwick's Case. Godb. 326. Anonymus. Styles 401. Anonymus.

Original be brought against Two, and One comes in upon the Exigent, there may be a new Original brought against the other with a Simul cum, and those who are waived may be Witnesses in the Cause; and this is the usual Practice: But those who are declared against with a Simul cum cannot

be Witnesses. Style 404. Anonymus.

30. A Trustee cannot be a Witness concerning the Title of the same Land, because the Estate in Law is in him. T. per Pais 224.

31. A Trustee may be a Witness against Cestus que trust. Per Hale, Twisden dubit. T. per Pais 229.

32. A Guardian in Socage shall be admitted to be a Witness for the Infant, for he is account-

able. T. per Pais 228.

33. On a Trial at Bar, Hale said an Executor may be a Witness in a Cause concerning the Estate, if he have not the Surplusage given him

Yd

by the Will: And fo I have known it adjudged.

1 Mod. 107. Fountain versus Coke.

34. In the Case of Brereton and Tatam, Mich. 1656. B. R. Glyn, Ch. Just. cited the Lord Chandos's Case in this Court, where one Gates an Executor was produced to prove the Will, as a Witness; to which he (as Counsel) excepted, because of his Executorship. It was answer'd, That he had fully administred: He reply'd, That afterwards Assets might come to his Hands; but the Court resolved that it would not be presumed to bar his Testimony, which was allowed in the principal Case, being in Ejectment. I. per Pais 162.

35. In an Action of Deceit for forging a Will, a Legatee was allowed and sworn as a Witness in the Trial for the Forgery; for this makes nothing to the Probate of the Will, or Recovery of the Legacy in the Spiritual Court, nor do

they take Notice of it. T. per Pais 240.

36. A Question was in Chancery whether a Legatee could be a Witness against a Will: And per Cur' upon Debate, The Reason why a Legatee is not a Witness for the Will is, because he is presumed to be partial in swearing for his own Interest: But the Legatee, when he swears against the Will, swears against his Interest; and is therefore the strongest Witness. Inter Oxenden and Penrice in Canc. 2 Salk. 691. Vide infra Numb. 40.

37. Mr. Solicitor Finch excepted against the Testimony of Mrs. Humphreys, because she was a Legatee of the Testator, the Plaintist's Father, from whom the Plaintist claimed 2000 l. And the Desendant in this Suit, after several Verdicts against him, and Payment of her Legacy, did make her Desendant in a Bill in Chancery,

whereby

whereby he prayed a Rebatement of the Legacy by this Accident, as Breach of Covenant, Set But per Cur', there's no Cause for it without collateral Security taken; fo if the Executor will pay a Legacy, having Notice of Debts.; but if the Money were paid pendent fuch Bill by the Executor, whereby to let in her Testimony without any Decree, she is no fufficient Witness; but because it was paid before, they would not admit any Exception, so much as to her Credit ; Et juratur. 1 Keb. 651. Payton vet-

fus Humpbrey.

38. On the Evidence at a Trial at Bar it aps pear'd, That the Husband of the Mother of the Infants, Legatees in the Will of Michela took Bond of double the Sums, to be paid when the Plaintiff, Heir at Law, did enjoy the Lands in Question against the Will; which, per Cur; 18 to the Testimony of the Mother, and not only to her Credit; and tho' it were released; yet this being a champertuous Interest created by the Party, the Release doth not enable her to be a Witness, as on a Release of Legacy it would that is created by Act in Law, but by Confent, the was fworn. 3 Keb. 75. Turnstall; Leffor of Greve, and Gratbooke.

39. In a Trial at Bar, in Ejectment, the De fendant, claimed under a Will, and offered to prove the Publication of it by B. and Exception was taken to his Evidence, because he was a Les gatee, and also had an Annuity given him by the Will in Question, which was confess d; but to enable him to be a Witness, an Acquittance, was produced of the Legacy, and a Release of the Annuity, and the Money was proved to be peid for both : To which 'twas objected, That all this was done pending the Action, which Obs.

jection proved to be false: But per Cur', if is had been pending the Action, yet he shall be admitted as a Witness. And it has been adjudged, That if a Release had been sealed in Court whilft the Cause was trying, that the Releafor should be admitted as a good Evidence. Another Exception was taken to B. because he was Trustee for Part of the Land disposed of by the Will; and then he produced a Release, by which that Trust was releas'd to other Trustees. A third Exception was taken to B. for his being in Poffession of Part of the Lands in Question, and so answerable for the Profits. To which it was answer'd, That he was in Possession only as a Servant to the Lord Manchester; so he was fworn, and proved the Will; and the Jury gave a Verdict for it. 2 Sid. 315. Stevens verf. Gerrard, S.C. 2 Keb. 128.

40. By Roll Ch. Just. Although upon a Trial, one who is a Legatee by a Will may not be admitted for a Witness to prove that Will, yet he may be examined as a Witness to prove a Deed, or other Thing, which hath not Relation to the Will, in Respect of the Interest which he claims

by the Will. Style 370. Anonymus.

41. The Courts of Justice do every Day deny Men to be Witnesses one for another, when all claim under one Title, as in the Case of a Modus Decimandi, and the like. Hob. 91. Lord William

Howard versus Christopher Bell & al.

42. An Action was brought by the Corporation of the Weavers of Norwich, for a Penalty against a Weaver, for working at his Trade in Harvest-Time, contrary to an Ordinance by them made. And Atkyns Justice allowed one of the Corporation to be a Witness, tho one Moiety of the Penalty was due to the Corporation. Lent Affixes 1657. T. per Pais 162.

43. An

tion

Affizes Suffolk 1669, by the Town of Ipswich, for sol. a Fine set upon one chosen Common Council-Man (called their prime Constable) for refusing to renounce the Covenant, &c. and the Town-Clerk (tho a Freeman) was allowed a Witness to prove Election, Refusal, &c. and the Fine set, which is for Necessity, for that none other are, or ought to be present at those Acts. Per Rainsford Justice, T. per Pais 163.

44. Per Hale Ch. J. Norfolk Summer Affizes 1668, A Freeman of Lynn is not an allowable Witness to prove the Custom of Foreign bought and Foreign fold in that Town. Harwich versus Twells.

T. per Pais 163.

45. The Company of Sadlers brought Debt upon the Statute of 1 fac. 1. c. 22. and Sect. 44. against the Desendant; for that being a Sadler, he did make five hundred Saddles unsufficiently and unsubstantially, Contra formam Statuti, and so became indebted to them in the Forseiture. This Action being now brought for the Penalty, three of the Company were disfranchised to be legal Evidence, they declaring upon a Voire dire, that they had no Assurance of being received again. 6 Mod. 165. The Warden and Company of Sadlers versus fones.

false Return to a Mandamus, the Defendant produced several Freemen of Canterbury to prove the Return true; to which it was objected, they ought not to be admitted, being Freemen of Canterbury; and a By-Law was produced, by which it was order'd, that the whole Corporation should be at the Charges of the Return. The Defendant, to qualify these Witnesses, produced a Release he had given to the Corpora-

tion of all Contributions they were liable to on this Account; and on much Debate on a Bill of Exceptions, it was agreed they were good Witnesses. 2 Levinz 36. Enfield versus Hill, S. C.

T. 70. 116.

47. In an Action on the Case against the Town of Uxbridge, for taking Toll on Thursday Market, it was said, No Uxbridge Man of the pretended Corporation can be a Witness; and so by Hale Chief Justice it was ruled in the Case of the London Hawkers: And in Smith and Hancock's Case, no Freeman could be allowed to prove the Custom of this City that was of the Corporation. 3 Keb. 12. Pl. 16. Cook versus Baker.

48. In Trespass the Defendant justifies as Servant to the Mayor, Aldermen and Commonalty of the City of London, Governors of the Hospital of Bridewell, by Patent, 7 Ed. 6. The Witnesses being most Freemen of the City, Maynard, the King's Serjeant, would not consent they should be fworn: And per Cur'; In a Quo Warranto they could not be sworn, because each Member is liable to the Fine; but this being against Carter, To a Suit against them as another Corporation, viz. Governors of the Hospital; this being in another Capacity, and the Action not in the Right, the Possession can be recover'd against none but the Defendant Carter, or fuch as are of the Inhabitants of Bridewell, not against any Freeman or Citizen, as fuch; by Hale Ch. J. and Wylde : contra by Twisden and Rainsford; but to avoid this Question, Jefferies for the City pray'd Time till next Term, that in the mean Time they might before the Mayor of London in his Court, or at a Common Hall, as most usually, procure a temporary Disfranchisement of those Witnesses that were Freemen, to enable them to

be

be Witnesses; which the Court granted. 3 Keb.

300. Lord Dorfet versus Carter.

49. Hale Ch. J. in Hancock's Case in the Exchequer, in a Quo Warranto against the City of London, it was agreed, That none could be Witnesses for the City of London against the Hawkers, until they were disfranchised; for the Evidence cannot surrender his Franchise by Consent; and because the Right was concerned, and every particular Member liable to the Fine, he cautioned them so to do in this Case of Package; and so it was here in the Case of Water-Bailage. 3 Keb.

295. Corporation of London and -

50. The Mayor and Commonalty of London brought an Indebitatus Assumpsit against A. B. for 51. for so much due to them for divers Tons of Wine, brought from beyond the Seas to the Port of London, at Four Pence per Ton. Upon Non Assumpsit pleaded, and Trial at Bar, divers Freemen of London were offered as Witnesses for the Plaintiff. But the Counfel of the other Side excepted to them, for that they were Parties, (the Commonalty of London comprehending all the Freemen) and being likewise interested. On the other Side it was faid, That their Interest was in no Sort to be confider'd, it being fo very small and remote; a small Legatee hath been sworn to prove a Will. In an Indictment against the County, for not repairing a Bridge, one of the County may be a Witness; (and this Justice Dolben said he had known in the Case of Peterburgh Bridge.) In an Action on a Robbery on the Statute of Winchester, the Plaintiff shall be sworn as Witness, and that for Necessity. But it was reply'd, That there was no fuch Necessity here, for they might have other Witnesses besides Freemen (thos perhaps

perhaps with Difficulty). In an Action against the Hundred upon the Statute of Winton, an Hundredor cannot be a Witness. Scroggs Ch. J. Dolben and Raymond were of Opinion that they were Witnesses. Jones contra. And a Bill of Exceptions was tendred by the Counsel for the Defendant, which the Court profer'd to seal, and to allow three or four Days Time to draw it up. But afterwards the Plaintiff's Counsel offer'd other Witnesses, and set by their Citizens; but the Verdict went for the Defendant. 1 Ven. 351. The Case of the City of London concerning the

Duty of Water-Bailage.

51. In an Information in the Nature of a Que Warranto, for taking a Half-penny a Chaldron for all Sea-Coals imported into London, the Defendant prescribes for the Duty, and Issue was taken upon the Prescription, which was tried at the Bar. The Defendant produced several Witnesses (who were Freemen of London) to prove the Prescription; to which it was objected, they ought not to be Witnesses Quia in proprio Cafu. But by the Court, It appears the Mayor and Sheriffs have all the Profits of this Toll, altho' to the Benefit of the Corporation of which all Citizens and Freemen are Members; yet having no particular Profits to themselves, they were Iworn as Witnesses; for it cannot be intended that they would perjure themselves for so small and remote an Advantage: And the Jury gave a Werdict for the Defendant. And Scroggs Ch. J. faid, That it cannot be a General Rule that Members of Corporations shall be admitted, or refused to give Evidence in Actions brought by or against the Corporation; but every Case stands on its own Circumstances, that is, whether

their Interest is so great that it may be presumed to make them partial or not. 2 Lev. 241. The

King and the City of London.

Indebitatus, to pay Toll of one Half-peny for every Frail of Raifins, and Four Pence for every Ton of Oil, &c. for which the City prescribed by the Name of Water-Bailage, to be taken of all not Freemen, that bring such Wares by Water to be fold, to the City; on Non assumpsit pleaded, and Trial at Bar, Maynard excepted to a Witness for the City, because a Freeman; sed non allocatur; albeit he were disallowed for this Cause in the Exchequer, because albeit the Action be brought by the Mayor and Commonalty, the Benefit being only to the Sheriss, the Immunity of Citizens is not in Question. 2 Keb. 295. Mayor and Commonalty of London versus Gold.

53. At a Trial at Bar it was agreed, That if a Remainder, after the Determination of an E-state for Life, be given by Will to the Ministers and Church-wardens of a Parish, for Maintenance of the Poor of the Parish for ever; any one of the Parish may be an Evidence to prove the Will. 1 Sid. 109. Townsend versus Row.

54. An Information was brought against the Defendant for not repairing of a Highway, Ratione tenuræ, between Stratford and Bow: It was try'd at the Bar by an Essex Jury, and several Witnesses in other Parishes were sworn; none being admitted to give Evidence who lived in either of the said Parishes of Stratford or Bow. 4 Mod. 48. Rex & Regina versus Buckeridge & al.

or Corporate, being of Right obliged to repair decayed Bridges, and the Highways thereunto adjoining; but because the Inhabitants of the Coun-

F 4

Bridges or Highways lie, have not been allowed, upon Informations or Indictments brought against such Person or Persons, Bodies Politick or Corporate, for not repairing such decayed Bridges, and the Highways thereunto adjoining, by the Judges before whom such Information or Indictment is to be tried, to be legal Witnesses: By

Sat. 1 Ann. Seff. 1. c. 18. It is enacted,

That in all Informations and Indichments, to be brought and tried in any of her Majesty's Courts of Record at Westminster, or at the Assizes or Quarter-Sessions of the Peace, the Evidence of the Inhabitants being credible Perfons, or any of them of the Town, Corporation, County, Riding or Division, in which such decay'd Bridges or Highways lie, shall be taken and admitted, in all such Cases, in the Courts aforesaid, any Custom, Rule, Order, or Usage to the contrary notwithstanding.

Anno 1. Sess. 13.

so. On Evidence to a Jury at Bar, in Ejectment, the Defendant challenged a Witness produced by the Plaintiff, to prove a Leafe made by the Dean and six Residentiaries of Hereford, under whom he claimed; because, tho' the Witness were a Prebend at large, and a distinct Body, yet as one of the general Corps he had Power to assent, which, per Cur', is sufficient to set him asside, tho' he hath no Interest. 2 Keb. 126.

Smith versus Rawlins.

on the Statute of Winton, If a Man has Lands in the Hundred, but is no Inhabitant in the Hundred, but before the Action brought demised the same for divers Years yet to come, under an annual Rent to J. S. who inhabits in the Land:

The Lessor may be an Evidence in this Case, to prove any Thing for the Discharge of the Hundred; because by the Statute 27 Eliz. a Contribution is appointed by all the Inhabitants of the Hundred, and limited to all the Inhabitants in all the Vills, Parishes and Hamlets, and not generally on the Lands or Tenements; and it is not reasonable that the Lessee, being an Inhabitant, should be charged, and also the Lessor, in respect of the Rent who is an Inhabitant. Adjudged Mich. 1650. Bennet versus the Hundred of Hartford, 2 Rol. Abr. 685. Pl. 6. S. C. n. S. P. Sty. 233.

58. In an Action on the Statute of Winchester, the Issue was, Whether the Place where the Plaintiff was robbed was within the Hundred? And it was Resolved, If one has Lands, but does not inhabit in the said Hundred, but does let them, he may be a Witness: But a Man that inhabits there, although he pays no Taxes, shall be no Witness, because he is compellable to Watch and Ward. I Sid. 2. Oliver versus the Hundred of Wallington,

in Surry.

59. Upon the Statute of Hue and Cry, at a Trial at Bar, some House-keepers appeared as Witnesses, that lived within the Hundred, who being examin'd, faid they were poor, and paid no Taxes or Parish-Duties: The Quere was, Whether they were good Witnesses? Twisden: Alms-People and Servants are good Witnesses; but these are neither. Then he went down from the Bench to the Judges of the C. B. for their Opinions, and at his Return faid, Judge Wylde was confident that they ought not to be fworn, but Judge Tyrrel doubted; but afterwards was of the same Opinion, because, when the Money was recovered against the Hundred, they might be worth something. 1 Mod. Rep. 73. Anonymus. S. C. 2 Keb. 713. 60. Be-

60. Because many Church-wardens and Overseers of the Poor, and other Persons intrusted to receive Collections for the Poor, and other publick Monies relating to the Churches and Parishes whereunto they do belong, do often mispend the said Monies, and take the same to their own Use, to the great Prejudice of such Parishes, and the Poor and other Inhabitants thereof; and because that many Times the Judges when Actions are brought against Churchwardens and Overseers, to recover the Monies so mispent, taken or misapplied by the Persons aforesaid, refuse to admit the Parishioners to be Witnesses in fuch Cases, who are the only Persons that can make Proof thereof: Wherefore to prevent all fuch evil and deceitful Practices of Church-wardens and Overseers, and other Persons; By Stat. 3 & 4 W. & M. a. II. it is enacted,

'That in all Actions to be brought in their Majesty's Courts of Record at Westminster, or at

the Affizes, for the Recovery of any Sum or Sums of Money so mispent, or taken by Church-

wardens or Overseers of the Poor; the Evi-

dence of the Parishioners, or any of them, other than such as receive Alms, or any Pension or

Gift out of fuch Collections, or publick Monies,

of fuch Parish or Parishes respectively, whereof

the Defendant or Defendants, is or are Inhabitant or Inhabitants, shall be taken and admit-

ted in all fuch Cases in the Courts aforesaid, any

Custom, Rule, Order, or Usage to the con-

trary notwithstanding. 3 & 4 W. & M. c. 11.

* Sect. 12.

61. A Father offer'd to testify a Deed in Purfuance and Affirmance of a Lease made to his Son by himself, which the Court allowed; his Interest being pass'd away. 1 Keb. 280. Jay versus Rider. Vide Sid. 75.

62. Nota;

Chancery, betwixt Gee and Spencer (which was agreed by all the Bar) That in an Action upon the Case at Common Law, or Bill brought by the Son upon Marriage-Agreement made by the Father, the Father may be a Witness, though he also might have had the Bill or Action. 4 Keb. 335. Anonymus.

63. A Man makes a Feoffment to one, and after makes a Feoffment to another of the same Land, and in that covenants that he was seised in Fee at the Time of the last Feoffment: And after an Issue is taken on the first Feoffment, scilicet, Whether there was any such Feoffment? the Feoffor shall not be sworn to prove there was none, because then he would swear for himself, to save his Covenants. Pas. 15 fac. 1. B. R. Searl versus Searl. 2 Rol. Abr. 685. Pl. 1.

64. In an Action for Trover and Conversion by Assignee of the Commissioners of Bankrupts, both Parties admitted the being a Tradesman, the Bankruptcy now, and the Petition and Transactions of Commissioners; and insisted only on a Bill of Sale, which the Plaintiff faid was fraudulent: The Defendant said it was Rona fide, by Edward Mico the Bankrupt in 1665, April 22, to his -Sir Samuel Mico, of 180 Pipes of Wine, whereof 12 were tender, and of Use only for Strongwatermen; and the Evidence offer'd Depositions before the Commissioners of the Barnkrupt himself: which per Cur', is good enough: But the Defendant's Counsel opposing them, they proved Viva voce, what the Bankrupt confess'd. The Defendant excepted to a Witness, because he was a Creditor, and may come in before a Division; but after four Months after any Devidend he is a good Witness; for no other Dividend shall be intended:

tended; but here no Division being made, he was fet aside. 2 Keb. 348. Brents versus Mico, Executor of Sir Samuel Mico.

office recordatur in bac verba, they need not shew forth the Bill, but when it is only that J. S. Protalit bic in Cur' quandam Billam suam, he must shew it; per Twisa & Cur'. The Defendant challenged a Witness, because Plaintiss in the Action, wherein the Agreement was sworn for Tithes; sed non allocat'. Tho' the Matter were not executed, and though they bear the Charge of the Suit; but if this has been an Information Tam quam, whereby the Witnesses were to have Benefit, they were not to be allowed: But this being at Common Law, they were sufficient Witnesses. 2 Keb. 131. The King versus Cleaveland.

Trial at Bar, the Defendant excepted to a Witness for the Plaintiff, because his Father, my Lord Gorges, paid a Debt, as Security with the Defendant's elder Brother, for the Defendant's Father; but their being no Counterbond, and therefore doubtful in Equity, whether he, as Heir, could recover any Thing against the Defendant, as Heir, the Court swore him; but if he were to let himself into a certain Interest, tho' but in Equity, the Court would set him aside; and the Verdict was for the Plaintiff. 2 Keb.

345. Vincent versus Tyrrengham.

67. It was proved at the Trial, that the Mother had made a Bargain with the Lessor of the Plaintiff, that in Case he recovered she should have a Thousand Pounds and the Thirds of the Estate, and therefore she was not admitted to be a Witness. 3 Mod. 84. Hicks versus Gore.

68. On a Trial at Bar upon a Stire facias, to avoid a Patent of the Office of Searcher, Exception was taken to a Witness, that he was to be Deputy to the Party that would avoid the Patent. Iwisden: If a Man promise another, that if he recover his Land, the other shall have a Lease of it, he is no good Witness; so neither is this Man. But by the Opinions of the three other Judges he was allowed, because the Suit here is between the King and the Patentee. I Mod. 21. Owen Harning's Case.

69. On Trial at Bar concerning Boundaries of Land: The Parson of the one Parish (the Land lying in two Parishes) was refused, because he might enlarge his own Parish; and by Consequence the Tithes. But one who about seven Years before had taken the Profits under the Title of one of the Parties, was received as a Witness, because now he might plead the Statute of Limitations. Far. 63. My Lord Wharton versus

Sir Fobn Robinson.

70. In Assumpfit, for twenty Pounds had and received to the Use of the Plaintiff, on Non Assumpfit pleaded it was tried before Jones Ch. J. at Nisi prius: The Case was, the Plaintiff and another were to play a Prize at fencing with die vers Weapons, and the Stakes were ten Pounds each, which were deposited into the Hands of the Defendant, for the Winner to have all. The Plaintiff having won, brought his Action against the Defendant, who was Stake-holder. The Defendant produced one Bond as a Witness, to prove the Plaintiff had not won. The Plaintiff objected against his Evidence, because he had laid a Wager with Hicks of Ten Pounds that the other would win the Prize; to which 'twas answered that Hicks acknowleded the Wager to be loft, and

and had paid it. On which the Plaintiff demurred; and all this Matter was return'd upon the Poftea. George Stroud for the Plaintiff argued, (1.) That he who lays a Wager cannot be a Witness for the Party on whose Side he lays. (2.) That he cannot be a Witness, although he had confess'd the Wager to be lost, and had paid it: for if this Trial should be against his Confesfion and Payment, he may recover the Money fo paid again. Jones Ch. J. held that fuch a Wager shall not take off his Evidence, but shall only go to his Credit. Ceteri tres Justiciarii contra. It is a constant Practice to reject the Evidence of fuch Betters; but for as much as he hath confessed the Wager lost, and has paid it, it shall be intended duly paid; and therefore he ought to be admitted as an Evidence. And Judgment was given for the Defendant because he was not. 3 Lev. 152. Rescous versus Williams.

read, that one of the Witnesses had declared that he had got a Guinea to stifle the Truth. Gould: An Affidavit of him who had the Guinea were something, but his Saying is nothing. A Witness's laying a Wager in the Cause, is no Hindrance to his being a Witness: For the other has an Interest in his Evidence, which he cannot deprive him of. Fares. 31. George versus Peirce.

72. An Indebitatus assumpsit was brought for the Profits of the Office of Chancellor to the Bishop of Landass. The Desendant pleaded Non assumpsit; and this being an Issue directed out of Chancery, 'twas try'd at the Bar. The Point now tried was, Whether it had been an Usage in this Diocese to grant this Office to Two, and it must be such an Usage as was before the making the Statute I Eliz. otherwise it will not warrant such

a Grant. The Bishop being in Court offer'd to be fworn to give Evidence concerning the Ufage in his Diocese, and that he had granted this Office to one, &c. But this was not allowed; for if the Plaintiff hath a good Title, then the Grant made by the Bishop is void; and it was compared to the Case of a Patron in an Ejectment, who is never permitted to be a Witness to maintain the Title of his Clerk. Then it was objected, that fince the Plaintiff had produced no Grant totwo Persons but what was 50 Years after the I Eliz. that it would be a very difficult Matter to persuade the Jury to take it upon their Oaths, that the Office was granted fo before the making of the Statute. But Serjeant Pemberton answer'd, That these Grants were only produced as Evidence that fuch were made; there being no Records extant relating to this Matter before that Time. And Justice Dolben remembred Ridley's Case, concerning the Office of Register of Bristol, wherein my Lord Hale was of Opinion, That if it could be shewn such Grants were made some Time after I Eliz, it would be an Evidence that fuch were also made before the Statute. 4 Mod. 16. Jones versus Bean.

73. If three several Men in a Suit in Chancery depose or swear that J. S. made such an Arbitrament, and the Party grieved bring three several Actions against them on the Statute of 5 Eliz. for Perjury, they may severally swear one for another, in the three several Actions. Pass. 40. Eliz. Goulston versus Downs adjudged,

2 Rol. Abr. 695. Pl. 3.

74. In Evidence to a Jury at Bar, a Special Issue by Rule of Court was directed to try the Custom of Lady Percie's Manor of Westwood in Cumberland.

Cumberland, whether Fines on the Tenants on their Lord's Death, be due to the Heirs or Successfors of the Lord during his Minority. The Defendant excepted to the Steward, That he had Fee on Admission; sed non allocatur; and he was sworn. 3 Keb. 90. Pl. 31. Champian versus Atkinson.

75. 23 Aff. 12. An Exception was taken to a Witness because a Cousin; & non allocatur. 2 Rol.

Abr. 676. Pl. 6. Het. 137.

76. By Consent the Bail may be sworn as a Witness in the same Cause. 1 Keb. 296. Pl. 131.

Anonymus.

77. Nota; By Fleming Ch. J. and the whole Court, in a Trial at the Bar, where Exception was taken against a Witness, to prove the Execution of a Deed of Feoffment by Livery and Seisin, where the Case was, A Feoffment in Fee was made to the Use of 7. S. and two Witnesses were subscribed to prove the Livery of Seifin: afterwards one of these Witnesses had an Estate at Will made unto him of Part of this Land. and he being produced to witness the Execution of the Feoffment by Livery of Seiling was excepted against, because he was now a Party interested in Part of the Land, and so his Oath was to make his own Estate good: But notwithstanding this Exception was disallowed by the whole Court, and 'twas resolved, that he might well be fworn as a lawful Witness, to prove the Executing of a Feoffment by Livery and Seisin, this being in Affirmance of the Feoffment, and accordingly he was fworn, and his Testimony received and allowed of. I Bulftrode 202. Anonymus.

Ward who recovered, was produced as a Witness. And per Cur. He neither gains nor loses by this Trial, especially if the Money be paid. 2 Keb.

384. The King versus Sir John Lenthall.

78. In Evidence to a Jury in Ejectment of Tithes on a Lease of the Dutchess of Somerset, the Defendant excepted to Depositions, because the Bill was in 1656. which is no Evidence against the Dean and Chapter, because this is no Evidence for them. The Plaintist excepted against a Copyholder in Reversion after an Estate-tail, to prove the Boundary of the Parish of Pressbot, and he was set aside for the Possibility, which makes him partial. 2 Keb. 435. — versus Hitchecock.

on an Issue directed out of Chancery to try the Number of Acres, the Desendant excepted to a Witness that had been a Trespasser, as Servant to my Lord Lee in the Lands in Question, an Action being depending, the Court set him aside; and thereupon the Plaintist was nonsuit. 2 Keb.

435. Tucke verfus Sibley.

80. If A. gives a Bond to B. conditioned for the Payment of all the Money due to B. from C. C. Shall be a good Witness to prove how much is due to B. from bimself that Lut. 663. Lad versus Garron.

81. A Lawyer who was of Counsel, may be examined upon Oath as a Witness to the Matter of Agreement, not to the Validity of an Assurance of to Matter of Counsel: And in examining of a Witness, Counsel cannot question the whole Life of the Witness; as that he is a Whoremaster, &c. But if he hath done such a notoribus Fact, which is a just Exception against him, then

then they may except against him. That was Onbie's Case of Gray's Inn; and by all the Judges it was agreed as before. March 83. Anonymus.

82. In a Trial at the Bar between Waldron Plaintiff and Ward Defendant, one Mr. Cony, a Counfellor at the Bar, was examined upon his Oath to prove the Death of Sir Tho. Cony; whereupon Sejeant Maynard urged to have him examined on the other Part, as a Witness in some Matters whereof he had been made privy, as of Counsel in the Cause. But Roll Ch. J. answered, He is not bound to make answer to things which may disclose the Secrets of his Client's Cause. and thereupon he was forborn to be examined.

Styl. 449. Waldron verfus Ward.

83. Mr. Aylett having been Counsel for the Defendant, defired to be excused to be sworn on the general Oath as Witness for the Plaintiff, to give the whole Truth in Evidence, which the Court after some Dispute granted; and that he should only reveal such Things, as he either knew before he was of Counfel, or that came to his Knowlege fince by other Persons, and the Particulars to which he was to be fworn were particularly proposed, viz. What he knew concerning a Will in Question? Whether he knew any Thing of his own Knowlege? I Keb. 505. Pl. 69. Sparke versus Sir Hugh Middleton.

84. Upon a Trial at Bar, one Baker (who had been Solicitor for Pickering,) was produced as a Witness concerning the Rasure of a Clause in a Will, supposed to be done by Pickering. The Court were moved, Whether he could be examined touching this, because having been retained his Solicitor, he should by Reason of that be obliged to keep his Secrets? But it appearing

that

that B. had made this Discovery to him, of which he was now about to give Evidence, before fuch Time as he had retained him, the Court were of Opinion that he might be fworn ; otherwise if he had been retained his Solicitor before: The same Law of an Attorney or Counfel. 1 Vent. 197. Cuts versus Pickering.

85. A Clerk attending upon a Grand Jury, shall not be compelled to be a Witness to reveal that which was given them in Evidence. T. per

pais 226.

86. The Judge would not fuffer a Grand Turyman to be produced as a Witness, to swear what was given in Evidence to them, because he is fworn not to reveal the Secrets of his Companions. But Quære? For if a Witnels is questioned for a false Oath to the Grand Jury, how it shall be proved if some of the Jury be not fworn in fuch Cafe, Cl. 84. Anonymus.

87. Nota; A Parson's Evidence to prove a Woman a Concubine was rejected; because he would have marryed her himself. See Cases in

created he that the query present distance and

L. and Eq. Part 1. f. 181.

Solo Hotel State Control of the Solo of th interest in a silowed a thronicis to to liviting

at him Constit Physics was off the late.

CHAP. V.

Of written Evidence.

UNder this Head of written Evidence, may be comprehended fuch as is printed, touching which we have the following Cases, viz.

or not, secundum subjectam materiam: It may be a good Evidence of the General History of the Realm; but it is not sufficient to prove a private Right, or a particular special Custom. See the Case of Steyner and the Burgesses of Droitwith, Skinn. Rep. 623. Ergo Camden's Britannia not admitted to prove a Reputation. See The Bankers Case. Ib. 603. nor Dugdale's Monasticon, Ibid. 624. and yet Speed's Chronicle was admitted in Evidence, in the Case of the Lord Brounker

v. Sir Robert Atkins. Ibid. p. 15.

2. The Case of Steyner vers. The Burgesses of Droitwich is reported in Salkeld thus: An Issue was directed out of Chancery, wherein the Question was, Whether by the Custom of Droitwich Salt-Pans could be sunk in any Part of the Town, or in a certain Place only? And upon the Trial at Bar, Camden's Britannia was offer'd in Evidence, but refused: For the Court held, That a General History might be given in Evidence to prove a Matter relating to the Kingdom in General, because the Nature of the Thing requires it; but not to prove a particular Right or Custom. So in the Case of St. Katharine's Hospital, Hale allowed a Chronicle to be Evidence of

of a particular Point of History in K. Edward the Third's Time; and so a Year-Book may be Evidence to prove the Course of the Court: Yet in this Case it was admitted, That Heralds Books are good Evidence as to Pedigrees, and Parish-Registers as to Births and Marriages, upon the Nature of the Thing: And it was said, That in the Question, being whether the Abbey De Sentibus was an Inserior Abbey, or not, Dugdale's Monasticon was resused for Evidence, because the Original Records in the Augmentation-Office might be had or resorted to.

3. Note; As to the Books of the Heralds, see Cumberba. 63. Telverton 34. a Knighthood tried by their Register; and 3 Mod. 259. a Descent

proved thereby.

4. A printed Proclamation is no Proof without being examined by the Original State Trials, 4 Vol. 413. The Council-Books held no Evidence. 2 Vol. 600. Printed Trials are no Evidence. 3 Vol. 313. Journals of the House of Commons. or their printed Votes, held no Evidence. Quare: 3 Vol. 323. yet fee ibid. 557. the Journals of the Lords and Commons, and their Addresses read as Evidence: And note, That even a printed Act of Parliament is no concluding Evidence. unless examined by the Record. Vide infra. Yet fee the Journal of the House of Peers read as Evidence for the Prisoner. Ibid. 2 Vol. 591. And the Examination of a Witness before a Justice of Peace, was read on Behalf of a Prisoner; (but this was only to fee if it agreed with his Evidence then given in Court; 2) 2 Vol. 396. See also 578. and 3 Vol. 668. fuch an Examination read against a Prisoner.

5. The Copy of a Record may be given in Evidence, because Records are of so high a Nature,

and of fuch Credit in Law, that they can be proved by nothing but themselves: And no Rafure or Interlineation shall be intended in them. And for this Reason, the Copy of a Record being sworn to be a true one, is allowed to be given in Evidence: But the surest Way is to have it exemplified under the Great Seal, or at least under the Seal of the Court. 10 Co. 92. b. Lay-

field's Cafe.

6. In Ejectione firma, for the Rectory of Burgfield in the County of Berks: Upon a Demise for Years made by Dr. Griffiths, and a Trial at Bar, the Case upon Evidence appeared to be, That the Earl of - being a Popish Recusant convict, had prefented the Lessor; who thereupon was instituted and inducted into the said Rectory: But the Record of the Conviction was burnt, as was supposed, amongst other Records of the same Nature in the Inner Temple; wherefore the Defendant offered to prove it by other Evidence, as by the Estreats thereof into the Exebequer, and - made accordingly by Authority of this Court from Time to Time, as also by an Inquisition found and returned here of Recufants Lands. And it was held by Hale Chief Baron, and the whole Court, That in fuch a Cafe as this, a Record may be proved by Evidence, because the Conviction here is not the direct Matter in Issue, but is only Inducement to it; as if an Appropriation were in Iffue, the King's Licence, if it could not be found upon Record, might be proved in Evidence without shewing a Record of it, although it be the Foundation of the Appropriation. So in Sir Paul Pindar's Case, in an Action of Trover and Conversion for Goods, the Proof depended upon a Fieri facias & penditioni exponas; and yet in that Case, because

cause the Fieri facias could not be found upon Record, it was admitted to be proved in Evidence : So in this Case. But then the Proof must be strong and cogent, slight and ordinary Evidence will not ferve the Turn. Accordingly in this Case, the Conviction was admitted to be proved in Evidence; but because by the Estreat of this Conviction into the Exchequer, it appeared to have been at the same Assizes, at which the Party was prefented as a Reculant, which neither the Statute of 23 or 29 Eliz. does allow of: For a Proclamation is directed to be made at the fame Affizes or Gaol-delivery, in which the Indictment shall be taken (if the same be taken at any Affize or Gaol-delivery,) by which it shall be commanded, that the Body of such Offender shall be rendered to the Sheriff of the same County before the next Assizes, &c. Upon this it was held, That the Conviction was not sufficiently proved; and the Jury found for the Plaintiff. Har. 323. Knight versus Dauler, S. C. I Keb. 7.

7. In an Action of Trover and Conversion brought by an Administrator; upon Not guilty pleaded, the Defendant upon the Evidence confesses, That he did convert the Goods to his own Use; but farther saith, that the Intestate was indebted to the King, and that 48 May, 14 Car. it was found by Inquisition, that he died possessed of the Goods in Question; which being returned, a Venditioni exponas was awarded to the Sheriff, who by Virtue thereof fold them to the Defendant. And to prove this, the Defendant shewed the Warrant of the Treasurer, and the Office-Book in the Exchequer, and the Entry of the Inquisition, and the Venditioni exponas in the Clerk's Book; to which the Plaintiff faith, That the Matter al-G 4 ledged

ledged is not sufficient to prove the Defendant Not guilty; and that there was no such Writ of Venditioni exponas. And the Defendant saith, That the Matter is sufficient, and that there was such a Writ: But it was clearly agreed, That upon Evidence the Court for reasonable Cause, at their Discretion, may permit any Matter to be shewn to prove a Record. Al. 18. Wright versus Pindar, S. C. Sty. 22 and 34.

8. He, that takes out a Copy of Part of a Record, must at least take out so much as concerns the Matter in Question, or else the Court will not permit it to be read. T. per Pais 166.

9. A Copy of a Record is not true, unless it be transcribed in the same Language, and therefore a Translation shall not be given in Evidence; as where the Record is in Latin, and the Copy

in English. T. per Pais 228.

10. Upon View of the Parliament-Roll of the Stat. 2 Ed. 6. for Payment of Tithes, and comparing it with the Declarations in the Causes between Bowes and Broadbead, and Burraston and Herbert, it was found that the Statute was rightly recited, notwithstanding what bad been objected, and the Journal-Book of Parliament produced to the contrary; and thereupon Judgment was given in both Cases; and the Court said, That they were to be ruled by the Parliament-Roll, and not by the Journal-Book. And the same Day, in the Case between Boyer and Tantulyar, for the same Reason, the Court ordered the Parliament-Roll to be brought into Court the next Term, to make it appear whether an Adjournment of Parliament was well recited, and would not credit the Fournal-Book. Style 155. Anonymus.

for the Selling of Delinquents Estates, was sworn

and that it was a true Copy before it was admitted to be read in Evidence. Notae Style 462.

burle versus Madison.

may be given in Evidence; and if upon collateral Issue, it is to be proved that such a one was Justice of the Peace, or Baronet, &c. common Reputation is sufficient Proof, without shewing the Commission or Letters Patent of the Creation. T. per Pais 226.

13. A printed Copy of an Att of Parliament is not to be given in Evidence, if not examined by the Rolls, and fworn to be a true Copy. T. per

Pais 232.

14. A private Act that concerned Rochester-Bridge, though printed by Rastal, was not allowed in Evidence, not being examined by the Record. Otherwise of General Statutes; there the printed Statute-Book is good Evidence. T. per Pais 232.

15. If a Fine be given in Evidence, with five Years Non-Claim, &c. the Fine must be shewed with the Proclamations under Seal, and the Chi-

rograph will not ferve. T. per Pais 209.

16. In Ejectment for Lands in Brecknocksbire in Wales; upon Not guilty pleaded, and a Trial there, the Defendants gave in Evidence a Recovery in a Writ of Quod ei deforceat, which is their Writ of Right at the Great Sessions there; and produced an Exemplification of the Record, under the Seal of the Great Sessions, but not the Record it self; and the Plaintiff demurred to the Evidence; and the Question now was, Whether the Exemplification maintained the Issue for the Defendants or not? Trevor pro Quer', That it is no Evidence; he said, That Lieger-Books and such Paper-

Paper-Books cannot be exemplified, but when offered in Evidence, must be themselves produced: But yet that Exemplifications of Pope's Bulls under the Bishop's Seal had been admitted in Evidence in Sir Tho. Read's Cafe. Hill. 22 7ac. B. R. But the Common Law took no Notice of Exemplifications, till the Statutes of 3 & 4 Ed. 6. and 23 Eliz. c. 3. which Statutes concern Letters Patent only, as was refolved in Page's Cafe. 5 Rep. and in 5 R. 2. Parl. Roll. Numb. 85. there is an Answer in Parliament, That the Law admits of no Exemplification of Process or Pleadings. Objection: By the Act of 34 H. 8. concerning Wales, and the Government thereof, it is enacted, That Exemplifications of Records shall be allowed. Resp. There are but two Repertories of Records in Wales, the one in North-Wales, the other in South-Wales; and this Statute extends to the Welchmen only; as appears Plow. Com. Obj. 27 Eliz. e. 9. Refp. That Act extends only to Fines and Common Recoveries. And the Court here cannot take Notice of the Exemplification of a Record there, where the Jurisdiction is limited; as appears Cro. Car. 34. upon a Record removed hither. And Hill. 7 Car. B. R. in Price's Cafe, the Judge cited Authority, That if the Record of a Judgment there were removed hither, an Action of Debt would not lie upon it; nor was any fuch Evidence ever offer'd fince, 34 Hen. 8. And a Law difused is, as it were, become null. Vide Littleton upon the Statute of Merton concerning Disparagement, Hob. Rep. 78. St. John's Cafe. 6 Rep. Gateway's Cafe, and 37 Ed. 3. Rot. Parl. Numb. 10. The Barons and Serjeants at Law were yearly to make Enquiry what Laws were used, and what not: Also the Exemplification is only of the Inrolment of the Record, and

not of the Record it felf. 2 & 3 Eliz. Dyer 187. 275. Bro. Record. 49. Co. Inft. 225. and Dyer 369. Scire facias does not lie upon the Tenor of a Record. And by 15 Aff. 16. a Record in Wales cannot be vouched here; and in a Case tried at Lent-Affizes 1656. fuch an Exemplification was not admitted for Evidence upon Iffue of Nut tiel Record in Ejectment, and fo concluded pro Quer. But it was faid on the other Side, That here the Iffue is not upon Nut tiet Record. but the General Issue; and the Exemplification comes in upon Evidence only to the Jury, and may be sufficient ground for them to find for the Defendant; Et adjournatur. At another Day Atkyns argued for the Defendant; he cited Newy's and Scholastica's Case. Plow. Com. 411. where the Chirograph of a Fine was given in Evidence to the Jury, upon a General Mue in Affize. Dyer 239. b. The Jury find a private Act of Parliament, Dyer 167. Conftat of a Patent. 5 Rep. Page's Case, Bro. monstrance de faits 68. The Difference is betwixt a Plea of Record. and Evidence upon a General Issue in Whitebead's Case, Temp. of Wylde Chief Baron. The Court held an Exemplification of a Recovery. under the Seal of the Mayor of Briftol, to be good Evidence to a Jury; and the Statute of 27 Eliz. feems direct in the Point. Vide 30 Hen. 6. 4. Dyer 233. Cro. Retords 65. Upon a Debate in Michaelmas-Term after, it was agreed, That a fworn Copy of a Record in Wales might be given in Evidence; but it is faid, That an Exemplification under their Seal could not, because the Court here ought not to take Notice of any fuch inferior Seal; but if it were exemplified under the Great Seal, then it would be Evidence and Proof, although the Record it felf were

were loft; but whilft the Record it felf is in Being, no Exemplification under any other Seal shall be admitted. But it was faid on the other Side, That it was held by the Judges at Serjeants-Inn, upon a Demurrer to Evidence in Whitehead's Cafe. That an Exemplification under the Seal of the Mayor of Briftol, of a Recovery there, should be given in Evidence, though the Record it felf could not be found. And fo it was at the next Affizes: and per Cur. Trials in the next adjoining County to Wales, are not by any Statute Law, but by Prescription; and they are tantamount to Trials within Wales, where it is admitted that fuch Evidence is good, being within the same Jurisdiction; & adjournatur. At another Day Baldwin argued for the Plaintiff, That it is no Evidence, because the Effect of the Record only is expresfed; whereas the Record it felf ought to be fet forth in bac verba. 3 H. 6. 4. Mich. 21 Car. B. R. Rot. 440. Wright versus Sir Paul Pindar, in Evidence to a Jury, to prove a diem clausit extremum out of the Exchequer, the Record it felf could not be found, but a Warrant for it, and an Entry of it in the Docket-Book was proved; and upon a Demurrer it was adjudged to be no Evidence, because a Record cannot be proved but by it felf, vid. Raft. Entries 318. 1 & 2 P. & M. Rot. 13. B. R. Fohn versus Langley. The Recital of a Lease without shewing it, ruled to be no Evidence upon a Demurrer. Vid. Bro. Record 74. N. B. 144. 28 Aff. 14. 9 H. 7. 9. Dyer 227. Plow. Com. 232. Dyer 236. No Exemplification is Evidence but in the same Court, to prove a Record upon nul tiel Recrod pleaded, but it must be under the Great Seal. Vid. Bro. Records 65. Co. 1 Inft. 128. 12 Ed. 4. 16. and the Statute of 27 Eliz. c. 3. extends to common Recoveries only. It must be given

given in Evidence by the late Act, in like manner as if it were to be pleaded, and that must be under the Great Seal; and so concluded pro Quer. Hardress 118. Olive versus Gwin. And Note; this Case is reported in 1 Sid. 145. and by this Book it appears, that Judgment was given for the Defendant.

Counsel with the Plaintiff produced a Common Recovery, which had docked the Intail; where-upon the Counsel on the other Side, pressed them to prove who was Tenant to the Pracipe, at the Time of the Recovery; But the Court would not allow thereof; for it shall be intended to be a good Recovery: and if it were otherwise, the Proof ought to be made by the other Party.

2 Cro. 454. Dame Griffin versus Stanhope.

18. On Trial at Bar, the Question was, Whether there was a Will or no Will? The Plaintiff produced a Deed indented, made between two Parties, the Man and his Son: And the Father did agree to give the Son fo much, and the Son did agree to pay fuch and fuch Debts and Sums of Money: And there were some particular Expressions resembling the Form of a Will; as that he was fick of Body, and did give all his Goods and Chattels, &c. But the Writing was both fealed and delivered as a Deed; and they gave Evidence, that he intended it for his last Will; which the Court faid, was a good Proof of his Will. Then the Defendant fetting up an Entail, the Plaintiff exhibited an Exemplification of a Recovery in the Marquis of Winchester's Court of ancient Demesne; the other Side objected, That they did not prove it a true Copy. But because it was antient, the Court said they should not be so strict upon the Evidence of it; for the other

other Side faid, the Court-Rolls were burnt in Basing-bouse in the Time of the Wars. Hale: I remember a Case, where one had gotten a Pre-Centation to the Parsonage of Gosnal in Lincoln-Shire, and brought a Quare impedit, and the Defendant pleaded an Appropriation, and there was no License of Appropriation produced, but because it was antient, the Court would intend it. Then they objected that they ought to prove Seifin in the Tenant to the Præcipe. Hale: It being an antient Recovery, we will not put them to prove that. He said, the Mayor of Bristol had offered in Evidence an Exemplification of a Recovery under the Town Seal, of Houses in Briftol, the Records being burnt, and that Exemplification was allowed for Evidence. I Mod. 117. Green versus Proude.

19. Where collateral Proof shall be admitted to shew the Testator's Intent in a Will, see Cases in L. and Eq. p. 9. 11. See also Lord Chief Baron Gilbert's Reports 203 to 209, 255, &c.

proved by Copy of the Roll under the Steward's Hand, the Roll being lost 3 Car. but without Proof there was such a Roll, the Court resused to allow it, although Possession had gone along with it according to the Recovery: And although this be Copyhold, whereof the Rolls are not in the Custody of the Party, but of the Lord, and no Records, but all done at one Court, and the Copy found but of late, without other concurrent Evidence of a Court then held: But per Cur. Such a Copy would be good Evidence of the Copyholder's Estate, but not of such a Recovery, being a judicial Ast; but this Recovery being recited in a Roll of Court, within four Years after the

Court admitted it. I Keble 567. Snow verfus Cut-

ler & Stanley.

21. A Record in an Inferior Court was rejected in Evidence, and put to prove it now, what was then done in the inferior Court, which was the Corporation-Court of Beverley. Clayton 85. Anonymus.

22. A Verdict against one, under whom either Plaintiff or Desendant claims, may be given in Evidence against the Party so claiming. Contr. if neither claim under it. Duke versus Ventres, Mic.

1656. B. R. T. per pais 206.

23: If one Man hath a Title to feveral Lands held by feveral Tenants, and if he should bring Ejectments against the several Defendants, and recover against one, he shall not give that Verdict in Evidence against the rest; because the Party against whom that Verdict was had, may be relieved against it if it is not good; but the rest cannot, though they claim under the fame Title, and all make the same Defence. So if two Tenants will defend a Title in Ejectment, and a Verdict should be had against one of them, it shall not be read against the other; unless by Rule of Order of the Court. But if an Ancestor hath a Verdict, the Heir may give it in Evidence, because he is Privy to it; for he who produceth a Verdict, must be either Party or Privy to it; and it shall never be received against different Perfons, if it doth not appear they are united in Interest. Therefore a Verdict against A. shall never be read against B. for it may happen that one did not make a good Defence, which the other may do. 3 Mod. 141. Lock versus Norborn.

24. Nota; By Choke and Bryan, an Office before an Escheator shall not be given in Evidence, unless it be exemplified; for it shall not otherwise be deliver'd to the Jury, unless it be under the Great Seal of England, no more than a Testimonial; and 'tis good Law. Bro. Gen. Is. Pl. 75.

25. A Writ of Entry on Disseisin, in the Nature of an Affize, was brought by William Davers, against one in the County of Warwick, on a Diffeisin of two Hundred Acres of Land, a Hundred Acres of Pasture, and Forty Acres of Meadow. And the Tenant faid that one Richard Varney was feised, and died seised; after whose Death. B. entred as Son and Heir, and gave Colour to the Plaintiff, and conveyed the Estate of the Heir to himself: The Plaintiff makes Title to himself by one Walter V. and traversed the dying feifed; and upon this they were at Issue; the Jury appeared, and the Parties also; and the Jury was tried and fworn, and the Record was read to them, and the Point in Issue rehearsed; which was, Whether R. V. the Elder, died feised or no? And if they found he did not die seised, then to enquire of the Damages. And at that Time Cownsend shew'd in Evidence that the said R. did die seised; for he shew'd that R. his Father, died feifed of the faid Lands, and had Iffue the faid R. his Elder, and the faid Walter, his younger Son ; (by whom the Plaintiff conveys his Right) that the Father died; after which the faid W. diffeised the faid R. in a forcible Manner. And that the faid R. fued out a Writ on the 8 H. 6. against the faid W. in which Action the faid W. pleaded in Bar, &c. and the faid R. derived a Title by his Father's dying feifed, and the dying feifed was traversed; and on that an Issue was joined, as it is now in the Writ of Entry, and tried for the faid R. &c. And he shew'd the Record exemplified under the Seal of the Common Pleas, which Writ of Entry was brought in Trinity Term the thirtieth

thirtieth Year of H. 6. and depended five Years. and Bryan faid, Why was not that Record pleaded against the Plaintiff by way of Estoppel, because he is privy? Ad quod non fuit responsum; for the dying feifed should not be tried in this Actiona if the Record had been pleaded. He also shew'd; that after the Death of the faid R. an Office was found before an Escheator, that the said R. the Father, died seised, and held of the Earl of Warwick by Knights Service; and that the faid R. the Son was Heir, by Force of which he was in Ward during his Nonage; all which Matters prove that the faid R. died feised, and so you'll find it. Bryan; You shew nothing of the Office, but a Copy # besides 'tis impertinent to this Issue; for what was found before the Escheator, was between other Persons, and so not material to this Plea; besides. if you will have any Benefit of this Office, it ought to be produced under the Broad Seal, for otherwise it is not better than a Letter, which fhall never be delivered to a Jury; quod Choke conce Mit. 21 Ed. 4. 37.

26. King Henry VIII. and Fdward VI. by their feveral Letters Patent, having given, granted bargained, fold and exchanged to and with divers and fundry the Subjects of this Realm, Bodies Politick and Corporate, in Fee-finiple, Fee-tail, for Term of Life or Years, divers Honours, Caftles, Manors, Lands, Tenements, and other Hereditaments and Offices: After and fince which, Grants, Bargains, Sales and Exchanges, divers of the faid Patentees, their Heirs, Successors or Affigns, have bargained, fold, given, exchanged or demised divers particular Parts, Parcels of Portions of the faid Honours, Castles, Manors, Lands, Tenements, Hereditaments and Offices, or other Things thereunto appertaining or belonging, to other

other Person or Persons, Bodies Politick or Corporate, that is to fay, to some of them in Feefimple, to some other in Fee-tail, for Term of Life or Years, or otherwise, and after the same Patentees, for Confiderations them moving, have furrendred or given up their faid Letters Patent into the Chancery, or otherwise the same Letters Patent have been forfeited by Attainder, loft. cancelled, imbezilled, or by other Ways or Means have come to the King's Hands, and thereupon oftentimes the Enrolment of the same hath been made void and frustrate, fometimes in Part, and fometimes in the Whole; by Reason whereof fuch Persons, Bodies Politick or Corporate, as have had Interest or Title in or to the same Caftles, Manors or Particular Portions or Parcels of the fame, fo to them given and granted, have been in Times past, and in Times to come are like to be difinherited, or in Danger of Loss of their Interest in or to the same, to their no little Hindrance and Peril: For Remedy whereof it is enacted,

That all and every Person or Persons, Bodies
Politick or Corporate, which lawfully shall or
may claim by Force of any Patent or Patents
made, or hereafter to be made, by the King's
Majesty, his Heirs or Successors, Kings of this
Realm, or by any of them, and all other that
now have, or hereafter shall happen to have, any
good or lawful Estate, Right, Title, Rent, Prosit, Interest or Possession of, in, to, or out of
any Honours, Manors, Lands, Tenements, Hereditaments or Offices; or of other Things to
any of the Premisses appertaining or belonging,
or to any Part, Parcel or Member of them, or
any of them, by, from or under any such Patentee or Patentees, or any of them, or by, from

or under the Heirs, Successors or Assigns of them or any of them, or by, from or under the Estate of any others which had, have or here? after shall have the Estate, Title, or Interest, of any such Patentee or Patentees, or by any other Means, under fuch Letters Patent, shall and may at all Times hereafter, in any of the King's Courts, his Heirs or Successors, and elfes where, make and convey unto themselves Titles by Way of Declaration, Plaint, Avowry, Title, Bar, or otherwife, as well against the King's Highness, his Heirs and Successors, and every of them, as against any other Person or Perfons, unto the said Honours, Castles; Manors, Lands, Tenements, Offices, and other the Premisses, or any Part or Parcel of the same, unto them or any of their Predecessors and Anceftors, or others, whose Estate they have in the fame, by, from or under the faid Patentees, or any of them, or the Heirs, Ancestors or Assigns of any of them, or otherwise under the Date of the faid Letters Patent, comprised or contained in any Exemplification or Constat thereof, made or to be made, by the shewing forth of the Exemplification or Constat of the Roll. or of fo much thereof as shall serve for the Matter in Variance, under the Great Seal of England: And the same Exemplification or Constat of the said Enrolment, so (as is aforesaid) pleaded and shewed, shall be of like and the same Force and Effect, to all Intents and Construc-' tions in the Law, as the faid first Letters Patent were and should be of, if the same were or fhould be pleaded or shewed. 3 & 4 Ed. 6. c. 4. 27. For the avoiding all such Doubts, Questions and Ambiguities as have risen, and of such as bereafter might arise, upon the Statute made in the H 2 Parlia-

Parliament begun and holden at Westminster, the 4th Day of November, in the 3d Year of the Reign of Edward VI. intitled, An Act concerning Grants and Gifts, made by Patentees out of Letters Patent, and for a due and full Supply of all such Wants as may be thought to be therein: It is enacted, 'That all and every Patentee and Patentees, their Heirs, Successors, Executors and Assigns, and all and every other Person, and Persons having by or from them, or any of them, or under their Title, any Estate or Interest, of, in, or to any Lands, Tenements or Hereditaments, or any other Thing whatfoever, to fuch Patentee or Patentees heretofore granted by any Letters Patent either of King Henry VIII. Edward VI. Queen Mary, King Philip and Queen Mary, or by any of them, or by the Queen's most excellent Majesty that now is, at any Time fince the 4th Day of February, in the 27th Year of the Reign of the faid late King Henry VIII. or else by the Queen's Majesty that now is, her · Heirs and Successors, at any Time hereafter to be granted, shall and may at all Times hereafter in any of the Queen's Highness's Courts, her Heirs or Successors, or elsewhere, make and convey, and be allowed and fuffered to make and convey to and for him, them, and for eve-' ry of themselves, such Claim or Title by Way of Declaration, Plaint, Avowry, Bar, Replication, or other pleading whatfoever, as well against the Queen's Highness, her Heirs and Successors and every of them, as against all and every other Person and Persons whatsoever, for or concerning the Lands, Tenements, · Hereditaments, or other Things whatsoever, fpecified or contained in any fuch Letters Patent, or of, for or concerning any Part or

6 Parcel

Parcel thereof, by flewing forth an Exemplification or Conftat under the Great Seal of Enggland, of the Enrolment of the faid Letters Pa-

tent, or of fo much thereof as shall and may ferve to or for fuch Title, Claim or Matter, the

fame Letters Patent then being and remaining

in Force, not lawfully furrendred nor cancelled, for or concerning fo much and fuch Part and

Parcel of fuch Lands, Tenements, Heredita-

ment, or other Thing whereunto fuch Title or

Claim shall be made, as if the same Letters Patent felf were pleaded and shewed forth; any

Law, Usage, or other Thing whatsoever to the

contrary notwithstanding. 13 Eliz. c. 6.

28. Part of a long Patent was copied our, and fworn True, and that it was fo much of it as did concern the Thing in Question; and the Counsel on the other Part did oppose this to be Evidence, and the Judge did in the End reject it, for that there may be Proviso's, &c. in the Patent, and the Witness could not swear he did read the Roll throughout of this Patent, so that no more was in it than now shewed: Quod Nota: if he could, it feems it had been admitted. Clay. 142, Nelthrop versus 70hnson.

29. If the King's Letters Patent are shewn in Evidence, in which 'tis recited, that the Office was before granted by Letters Patent to 7. S. and that he had made a Surrender of the same to the King who accepted thereof, and then in Confideration of this Surrender, the King grants the Office to 7. D. it is not sufficient Evidence to shew these Letters Patent, without shewing the Letters Patent made to J. S. and his Surrender by Matter of Record, for that is not to be tried or proved by any Thing but Matters of Record,

being Things of Record. Mich. 13 Car. B. R. H 3.

Mead

Mead versus Lenthall. In an Action on the Case for the Office of Marshal of the King's Bench, resolved per Cur', on the Evidence at a Trial at Bar. And Sir John Mead was Non-suited, because he did not prove it so; yet it seems it is not necessary to shew the Record; but 'tis not sit to suffer such Proof, without shewing the Record, or a true Copy of it: But it seems the Jury might well have sound it, if it had been credited. 2 Rol. Abr. 673. Pl. 2. 2 Lev. 108. Cragg versus

Norfolk.

30. Upon Evidence given at a Trial at the Bar, in a Trespass and Ejectment between Goodfon versus Jones, it was said, That one may not fhew in Evidence to a Jury an Inspeximus of a Deed enroll'd in Chancery, if it be not a Deed of Bargain and Sale enrolled there: For if it be a Deed of Feoffment, the Party must shew the Deed it self; for the Inspeximus is no Matter of Record. But by Roll C. J. Tho' the Inspeximus be the In-(peximus of the Enrolment, and not of the Deed it self; yet if it be an ancient Deed it may be given in Evidence. It was then also said, that if it do not appear by the Fabrick of a Deed that Lands are to pass thereby by Way of Feoffment: yet the Lands may pass by Way of Use, if there be a fufficient Consideration express'd in the Deed to raise a Use. It was also then said, that if a Deed do run thus, This Indenture made, &c. whereas in Truth the Deed is not indented; yet may this Deed operate as a Deed-Poll. It was likewise said, That if one make a voluntary Conveyance upon Consideration of Natural Affection, and is not at that Time indebted unto any Perfon, nor be in Treaty with any one for the Sale of the Lands, fuch Conveyance hath no Badge of Fraud; but otherwise it is, if he be indebted

or in Treaty for Sale of those Lands: It was then also said, That a voluntary Affidavit made before a Master of the Chancery cannot be given in Evidence at the Trial. Style 445. Anonymus.

31. It is dangerous to permit any one, who in pleading ought by Law to produce the very Deed it felf to the Court, on the general Isfue, to prove to a Jury by Witnesses that there was such a Deed, which they have heard and read; or to prove the fame by Copy; for the Faults, Rafings, or Interlinings, or other Imperfections in these Cases won't appear to the Court. Or perhaps the Deed may be on Condition, Limitation, or contain a Power of Revocation. Yet in great and notorious Extremity, as if by the Fire of the Party's House all his Evidences were burnt; then if this appears to the Judge he may, in Favour to fo great a Sufferer, permit him on the Issue to prove the Deed in Evidence to the Jury by Witnesses; that Calamity may not be added to Calamity; and if the Jury find it, altho' the Deed it felf be not shewn, it's clearly good. 10 Co. 92. Layfield's Cafe.

32. In a Trial at Bar between Thurle and Madison, it was said by Glyn, Ch J. that if divers Persons do Seal a Deed, and but one of them acknowledge the Deed; and the Deed is thereupon enrolled, this is a good Enrolment within the Statute, and may be given in Evidence as a Deed enrolled, at a Trial. It was then also said, That if a Deed express a Consideration of Money upon the Purchase made by the Deed, yet this is no Proof upon a Trial that the Monies expressed were paid, but it must be proved by Witnesses.

Sty. 462. Thurle versus Madison.

33. A Deed of Feoffment may be given in E-vidence as a Release, if without Livery. Per Bark-ley. Clay. 32.

34 In Evidence to a Jury at Bar, on Ejectment. Title was made by the Plaintiff as Leffee for 2000 Years of Lands in Causham in Wiltsbire, which the Defendant would prefume was revoked. shewing a Will and Charges and Settlements made afterwards by the Mother, who was feifed in Fee; but per Cur's Revocation or Surrender shall never be intended without Proof that it was actually done. The Leafe was loft, but the three Witnesses swore there was fuch a Lease; and that it was taken out of the Plaintiff's Trunk and burnt by the Defendant, was fworn by others; which per Cur' is Title sufficient to an Estate without producing the Deed; contra to a Debt. because the Party must say bic in Cur' prolat': The Defendant's Title was by a Conveyance of general Words, give, grant, enfeoff, &c. in Consideration of Affection, &c. with a Letter of Attorney to execute it by Livery, which was never done; wherefore per Cur', This is no Title as a Covenant to stand seized, as was offered by Finch, Solicitor, but after waived; and on the Morrow the Jury found pro Plaintiff. 2 Keb. 483.

Moreton Lessee of James vers. Horton and Thorner.

35. A Proof that there was a Revocation is sufficient for the Heir, without producing the Deed it self, which was taken away by the Defendant himself. A Lease recited in a Release was admitted to be proved by the Witness to the Release, without shewing the Lease it self, which was embezilled by Herbert, Lessor of the Plaintiff.

I Keb. 12. Negus versus Reynal.

36. A Fine was produced, but no Deed declaring the Uses; but a Deed was offered in Evidence, which did recite a Deed of Limitation of the Uses; and the Question was, Whether that was Evidence? and the Court said, That the bare

bare Recital of a Deed was not Evidence; but that if it could be proved that such a Deed had been, and lost, it would do, if it were recited in another; and it not being proved that ever there was a Deed leading the Uses of the Fine, the Counsel on one Side opposed the said Deed of Recitals being at all read: But the Court said, We cannot hinder the reading of a Deed under Seal; but what Use is to be made of it is another Thing. 6 Mod. 44. Ford versus Lord Grey.

37. A Lease and Release were given in Evidence to entitle the Plaintiff, and they were both named bæc Indentura, but were not indented. Good, per Hale Chief Baron, at Norfolk Sum. Aff. 1668. Brian versus Trundle. T. per pais 195.

38. The Deed to lead the Uses of a Fine sur concessit need not be proved per Testes. T. per pais 200.

39. A Rule of Court was made by Confent, that a Deed should be given in Evidence, without Proving the Execution of it. 2 Sid. 269. Anonymus.

40. An ancient Deed is good Evidence without proving or Seal on it. 1 Keb. 877. Wright versus Sherrard.

41. To prove the Sealing and Delivery of a Deed, and not know the Party that did it, is not good Evidence; but if he knows the Party upon Sight of him, it is good enough. T. per pais 172.

42. A Deed found in Archives of the Chapter of Hereford was read to prove an Endowment of a Vicaridge, being but concurrent Evidence; tho' it appeared not to have been ever fealed or delivered. 2 Keb. 126. Smith versus Rawlins.

43. An ancient Writing, that is proved to have been found amongst Deeds and Evidences of Land, may be given in Evidence, although the executing of it cannot be proved; for 'tis hard to

prove

prove ancient Things, and the Finding them in fuch a Place is a Prefumption they were honestly and fairly obtained, and preferved for Use, and are free from Suspicion of Dishonesty. 24 Car.

B. R. T. per pais 220.

44. In an Ejectment, the Plaintiff declared upon a Lease made and delivered the Day of the Date; but the Witness who was to prove the Deed, said he saw the Deed delivered, but could not swear it was delivered the same Day it bore Date. Coke directed the Jury to find it was delivered the Day of the Date; for being proved to be delivered it shall be intended to be delivered the Day of the Date. I Rol. Rep. 3. Stone versus Gubbon.

- 45. In one Beckrow's Cafe, in Evidence to the Jury it appear'd, that Beckrow intending to marry a Widow, made a Conveyance by Deed of Feoffment of his Land, to feveral Uses, by which he fettled his Land upon the Issue of the Feme, having Issue by a former Wife. But after the Marriage, he by much Importunity got the Deed of Conveyance into his Hands, out of the Custody of the Wife; and also an Obligation which makes mention of it, and was for the Performance of Covenants; and then he cancelled the Deed and the Obligation, and took off the Seal from them; and afterwards fettles his Land upon his former Children, and dies (having Issue by his last Wife). And in Actions under these Conveyances, it was permitted by the Court, that the cancelled Deed should be read in Evidence. But first there should be Testimony given of the Truth of that Practice, before it should be read. Het. 138. Beckrow's Cafe.
- 46. An Indenture to guide the Uses of a common Recovery was offer'd in Evidence; but the

Seals were torn of: Yet it being proved to have been done by a little Boy, 'twas allowed to be

read. Pal. 402. Argol versus Cheny.

47. An original Leafe could not be produced. being an ancient Lease; but the Grandson of the Leffor produced a Counterpart, found among the Evidences of his Grandfather. This was allowed for Evidence, tho' there was no fubscribing Witnesses to it; for Justice Windham said he had seen many Deeds in Queen Elizabeth's Time without any, and it was admitted as sufficient Evidence to prove a Man an Administrator, for to shew the Book of the Ecclesiastical Court, which granted it: in which the Act or Order of the Court for granting the Administration was entered, without producing the Letters of Administration themfelves; and Twisden faid it was so adjudged in the Lord Manchester's Case. I Lev. 25. Garret verfus Lifter.

48. All the Court held that the Counterpart of an ancient Deed, which might be lost, is good Evidence with other Circumstances; but not of it self without other Circumstances: But that a Counterpart of a Deed leading the Uses of a Fine, was of it self good Evidence. Stanison ver-

fus Davis, 6 Mod. 225.

49. A Copy of the Counterpart of a Leafe being lost, was given and allowed in Evidence.

Mich. 15 Car. 2. Strode versus Dr. Holt. B. R.

T. per pais 232.

Jo. Per Holt Ch. J. In a Case in my Lord Hale's Time, between Combes and Mayo, a Counterpart of an ancient Deed, was admitted as Evidence of the Deed; and a special Verdict was thereon drawn up, as finding of the Deed with a prout patet per the Counterpart; which he said was done to preserve the Precedents: And now

by all the Court, the Counterpart of a Deed, without other Circumstances, is not sufficient Evidence; unless in the Case of a Fine; in which Case, a Counterpart is good Evidence of it self. I Salk.

287.

51. In Evidence to a Jury on a Trial at Bar in Ejectment, a Copy of a Deed burnt in the Fire of Sir Thomas Gardiner was offer'd in Evidence; it was made by the Witness to carry about to Counfel, but never examined with the Original, and 'twas opposed by Jones for the Defendant, because never examined; but per Cur', This is good Evidence, as well as the Testimony of a Witness of the Contents of the Deed burnt; which was allowed to my Lord Coke, who witneffed a Conveyance in Sir Christopher Haydon's Case; and in one Donfe's Case at Oxford Affizes, the like Evidence was allowed; and per Twisden in Thin's Cafe, fuch a Copy was allowed without examining, and thereupon it was allowed and read. 2 Keb. 546. Medlicot versus Joyner, S. C. 1 Mod. 4.

52. In a Quare Impedit, the Plaintiff declared upon a Grant of the Advowson to his Ancestor: and in his Declaration fays, bic in Cur' prolat'; but indeed he had not the Deed to shew. Serjeant Raldwin brought an Affidavit into Court, that the Defendant had gotten the Deed into his Hands, and prayed that the Plaintiff might take Advantage of a Copy thereof, which appeared in an Inquisition found temp. Ed. 6. Cur': When an Action of Debt is brought upon a Bond to perform Covenants in a Deed, and the Defendant, cannot plead Covenants perform'd, without the Deed, because the Plaintiff has the Original Deed, and perhaps the Defendant took not a Counterpart of it; we use to grant Imparlances 'till the Plaintiff bring in the Deed, and upon Evidence, if

109

it be proved that the other Party has the Deed. we admit Copies to be given in Evidence. But here the Law requires that the Deed be produced; you have your Remedy for the Deed at Law.

1 Mod. 266. Anonymus.

53. It was holden for Law by Vernon, Judge of Affize, that where the Defendant himself hath the Deed which concerns the Land in Question, and will not produce it; in fuch a Case the Copy thereof will be permitted to be given in Evidence, and so it was, and the Witness swore it once in his Hand, and that the Copy produced was a true Copy of the Deed, and himfelf did examine it. Clayton 15. Anonymus.

54. To prove a Settlement made 9 Car. 1. the Plaintiff produced a Witness, who said, that he being to purchase an Estate from my Lord the Father, one Mr. Nichols, who was then of Counfel to my Lord, gave him a Copy of fuch a Deed, to shew what Title my Lord had. But being asked whether he did see the very Deed, and compare it with the Copy, he answered in the Negative: Whereupon the Court would not allow his Testimony to be a sufficient Evidence of the Deed. I Mod. 94. Henry Lord Peterborough verfus Fobn Lord Mordant.

55. A Bill in Chancery was offered in Evidence; and it was objected that Bills contain Matters fuggested by the Sollicitor, or Counsel of the Party without his Privity. But after a Debate, a Copy of the Bill against the same Party was allowed to be read in Evidence. For they faid they would not intend that it was preferred without the Party's Privity; and if it were, he has good Remedy against them that did it, by an Action on the Cafe. But they faid that this Evidence was not as valid as a Letter from the Party. Nota; (says the Reporter,) It was not urged that the Defendant had put in his Answer to the said Bill, and that there had been Proceedings upon it, which I think is a better Reason to allow it for Evidence: For the Prosecution by the Plaintiff answers the above-mention'd Objection of its being preferred by a Stanger, without the Party's Privity. And at the Sitting this Term in Guild-hall before Bridgman Ch. J. a Bill in Chancery was offered in Evidence, who asked whether there had been any Proceedings upon the Bill, and said, otherwise he would not admit it to be read: But the Answer and other Proceedings being shewn, it was allowed. Sid. 220. Snow versus Philips, S. C. I Keb. 780.

36. A Bill in Chancery was given in Evidence against the Camplainant; but this was held to be but of slight Moment. I Ven. 66. Mews versus Mews. But as to Evidence, what is allowable or not in Courts of Equity; see the General Abridgment of Cases in Equity lately published, in Title

Evidence, Witnesses and Proof.

127. It was the Opinion of Ley Ch. J. Chamber-lain and Dodderidge, Justices, That a Defendant's Answer in an English Court, is a good Evidence to be given to a Jury against the Defendant himfelf; but it is no good Evidence against other Parties. And the Judges said, That if the Defendant's Answer be read to the Jury, it is not binding to the Jury, and it may be read to them by the Assent of the Parties. And it was further said by the Court, That if the Party cannot find a Witness, then he is as it were dead unto him; and his Deposition in an English Court in a Cause betwixt the same Parties, Plaintist and Defendant, may be allowed to be read to the Jury, so as the Party make Oath that he did his Endeavour

to find his Witness, but that he could not see him, nor hear of him. Godb. 326. Anonymus.

59. The Answer of a Feoffee in Trust in the Chancery, was refused per Cur. to be given in Evidence, the Party being living, and none of the Parties to the Suit, which was betwixt the Heir and Cestui que Trust. 1 Keb. 281. Anonymus.

This Question did arise at the Trial, Whether the Answer of a Guardian in Chancery, shall be read as Evidence in this Court to conclude the Insant, there being some Opinions that it ought to be read? And the Desendant's Counsel insisting on the contrary, Eyre being the puisne Justice, was sent to the Court of C. B. then sitting, to know their Opinions, who returning made this Report, That the Judges of that Court were all of Opinion, That such Answer ought not to be read as Evidence, for it was only to bring the Insant into Court to make him a Party. 3 Mod. 258.

Eggleston & al. versus Speke alias Petit.

60. In Evidence to a Jury at Bar in Ejectment. the Defendant made Title as Purchaser under a Devisee, and shewed only a Bill in Chancery preferred by the Heir, under whom the Leffor of the Plaintiff claims against the Devisee, whereby the Will was fet forth and confess'd in the Anfwer, which per Kelynge & Moreton contra to Twifden, is no Evidence, though a Possession were proved accordingly in the Devisee, and that this had been by the Plaintiff confess'd in former Trials; and the only Point infifted on, was on the Nonage of another Devisor after; but one of the Depositions swearing that there was such a Will, and that he had read it, the Court admitted it; but he faying the Will was to the Son, under whom the Defendant claimed generally, not faying what Estate, and though the former Bill and other Depositions swear the Devise was in Fee, yet the Court would not admit it for more; but after, this was proved by another Witness. 2 Keb.

35. Evans versus Herbert.

one Wright, an Answer of one Lewis Mordant surviving Trustee, under whom the Plaintist claimed, was offered, but being after a Conveyance made by him, the Court refus'd; but had it been before, per Wyndham and Moreton, it would have been good against all claiming under him; which Twisden denied, because an Answer doth not discover the whole Truth, and therefore shall be admitted only against the Party himself that made it, and not of one Defendant against another, much less against a Stranger. 2 Keb. 424. Miles

versus Barnardiston.

62. One Cutrier preferred a Bill in the Exchequer-Chamber, against Rusbworth and others, Tenants of a Manor of the Countels of Pembroke'ss for Suit to his Mill, which he claimed by Prescription; many Witnesses were examined on both Sides: And now upon this Bill preferred against the Countess and Currier, a Trial at Law being directed to try the Title, the Countess would make use, at the Trial betwixt Currier and her felf, of the former Depositions taken, ut supra; and that being denied her, she now appealed to the Court for Directions in the Matter, and pray'd a new Trial. The Court was of Opinion, That the former Depositions ought not to be made use of at the Trial, because the Countess was not a Party to that Suit; and as they could not be read against her, no more could they be read for her. And because she was not bound by them, not having been a Party to the Suits

Suit; nor was she in a Capacity of examining any Witnesses in it, or preferring Interrogatories in it; for that Reason also, she could not make use of the Depositions of any that had been a Witness in it. And it is not like to the Case of an Ejectment, brought by a Reversioner, or Debt upon the Statute of Ed. 6. brought by a Proprietor of Tithes, after a Verdict at Law for the Lessee or the present Proprietor; for true it is, That fuch a Reversioner of Lands or Tithes, shall have Advantage of the Verdict, and give it in Evidence; but the Reasons are, because they cannot be immediate Parties to the Action or Suit; for that must be prosecuted by the Lessee or present Tenant: And likewise because they may give any Thing in Evidence to the Jury, as well as the Plaintiff himfelf: And Kindred or Affinity to the Reversioner, is a good Cause of Challenge; but it is otherwise in Case of Depofitions: For there, only Parties to the Suit can examine or interrogate. Likewise the Reverfioner or the Seignoress, might have been made a Party to the original Suit in Equity, though not at Law. And it was ruled accordingly, that the Depositions should not be made use of. Hardres 472. Rusbworth & al. versus Countess of Pembroke verfus Currier.

63. The Depositions which were read against my Lord of Bath in the other Cause, are no Evidence in this, because that Trial is not between the same Parties; and Depositions are never Evidence but where they are mutual, and this Defendant does not claim under any one that was Party to the former Suit. Cur. They may be read, because the Desendant shelters himself under the other's Title, and the Title of the Land is not in Question, but to whom the Rent shall

be paid. If the Defendant gives the Plaintiff's Answer in Chancery in Evidence, he may insist only to read such Part as he will, for it's like Examination of Witnesses; but then the other Side may insist to have the whole read after.

5 Mod. 9. Earl of Bath versus Battersea.

64. Depositions in Chancery of Witnesses, were refused in Evidence by the Judge, and Copies of Record sworn to be true ones were not permitted by the Jury to be taken away with them, as Deeds under Seal use to be. Clay. 85. Anonymus.

65. The Ch. Just. refused Evidence of Depositions in Chancery, because no Rule was made on the Hearing to allow them, but only a subsequent Order of Court after Dismission, and it appeared not whether they were taken here, or beyond Sea, in English or in a foreign Language, but only by Assidavit that the Witnesses were Foreigners, and could not be found: But the Court conceived, if the Depositions were according to the Course of the Court, they ought to be allowed; sed concordat. est inter partes. I Keb. 685. Sir Martin Nowel's Case.

66. If an Exemplification comes out of Chancery, of the Deposition of Witnesses since dead, the Jury may have it with them. Pas. 10 Jac. 1.

Thomas versus Cook, 2 Rol. Abr. 687. Pl. 3.

67. If an Exemplification comprehends the Depositions of some Persons that are dead, and some that are still living, the Jury shall not have it with them. Pas. 10 fac. 1. Thomas versus Cook.

2 Rol. Abr. 687. Pl. 4.

68. Richardson demanded of the Court, if there are several Depositions under the Great Seal given in Evidence, and some are read and some not; whether the Jury may take them with them from the Bar? And they all answered, they

pening

they might, because perhaps some were not read for Shortness of Time, or they were all to the fame Purpose, and being under the Great Seal they may have them. Lit. Rep. 69. Anonymus.

60. Bertue prayed the Depositions between Primate and the Defendants in Chancery of Witnesses that are dead, might be allowed at the Affizes in an Information of Perjury, which the Court refused, either for the Defendant, or the King, in regard the King is no Party to the Suit in Chancery. I Keb. 767. Fackson versus Fenwick & Holt.

70. Upon an Evidence in an Ejectione firma. the Court would not fuffer Depolitions of Witnesses taken in the Court of Chancery to be given in Evidence, unless Affidavit were made, that the Witnesses who deposed were dead. Godb. 193. Sir Francis Fortescue and Coake's Case.

71. Depositions taken in the Dutchy and exemplified, were offered in Evidence, but rejected, because the Answer of the Defendant was not also exemplified, so that it might appear to be the same Matter and Title; and by this it feems then they might have been allowed. Clayt. 9. Aldbrooke's Cafe.

72. In Ejectment for an Estate of the Lord Cobbam's in Kent, it was held upon Evidence per Cur. by Advice of all the other Judges, whom one of the Barons was fent to confult, (quod nota) That if one Witness be examined for the Defendant de bene esse to preserve his Testimony, upon a Bill preferred, and before Answer, and upon an Order of Court for his Examination. made upon hearing of Counsel on both Sides; and if after Answer, the Witness die before he be examined again, the Answer coming in on the 28th of November, and the Witness's Death hap-112

pening on the 18th of December following, and he being fick all the mean Time, fo that he could not go to be examined; that notwithstanding all this, the Examination of fuch a Witness should not be read in Evidence, because it was taken before Issue joined in the Cause, and he might have been examined after: And the Defendants did not appear to be in Contempt. Hard. 315.

- versus Brown & al'.

73. In an Ejectment. On the Trial were produced as Evidence for the Plaintiff, certain Depolitions taken in Chancery where was a Bill filed, and a Subpana issued, and Depositions taken de bene esse, and the Witness dies before Anfwer: And upon this Evidence a Verdict pro Quer. But the Poftea ordered to be staid until the Opinion of the Court was had; and now 'twas argued, that they were good Evidence; for the End of the Bill was to examine Witnesses in perpetuam rei memoriam; and if there had been an Answer, then they must be re-examined if living; but here they dying before Answer, are always allowed to be read in Chancery. It's true that generally speaking there ought to be Bill and answer proved before Depositions, but here the Witnesses die before Answer, and it was through the Defendant's Default, that there was no Answer; and his standing in Contempt shall not prejudice the Plaintiff, who cannot keep his Evidence alive. Here the Defendant joined in Commission, and cross-examined them; this is always allowed as Evidence there, and that Court is Time out of Mind, and Part of their Business is to perpetuate Testimony: And if this be not Evidence, any Defendant may by his Obstinacy, deprive me of the Testimony of antient Witnesses, by refusing to answer till their Death. In Godb. 326. 'twas a Quare,

Quare, If Depositions after Answer between the same Parties were to be allowed as Evidence: but held that 'twas, if could not be found upon Search, though not dead. See 2 Roll. Abr. 679. Econtr. Serjeant Tremain. They are no Evidence, because there was no Answer. Here was no Issue joined, and no Perjury can be affigned upon fuch Depositions, because no Issue is joined, I Cro. 352. Sharp's Cafe. 3 Inft. 167. To make Perjury, it must be in a Matter pertinent to the Issue; 'tis the common Practice to produce Bill and Answer. In the Case of Ford and Gray tried at Bar in Com. Ban. an Exemplification was produced of Depositions in Chancery, and because no Answer was shewn, the Depositions were rejected, per Ch. J. Polexfen & al' ibid. 'Tis the Anfwer that makes the Depositions of any Validity. Depositions in Case of an Answer by an Infant by his Guardian, may be read, though the Anfwer be no Evidence against himself. Ch. J. Holt, Quære, If any Court by Course of Law, can examine Witnesses till Issue be joined, and therefore I much doubt if these can be Evidence. We cannot take Notice what the Chancery allows as Evidence, and their Practice is no Rule to us; Dolben dubitabat. For that the Court of Equity is not so antient, for before Ric. 2. the Petitions were to the King, and by him referred fometimes to the Chancellor, and fometimes to the Treasurer, but no fettled Court of Equity before the Chancellor till Ric. II.'s Time. Gregory. That it is good Evidence, because they joined in Commission and did cross-examine. Eyres clearly of another Opinion, That it is good Evidence, that the Court of Equity hath been Time out of Mind. Sed quia Helf besitavit, adjornatur. Show. Rep. 363. Howard versus Tremain, S. C. 4 Mod. 146. 1 Salk. 278.

74. In Ejectione firmæ, for the Barony of Cockermouth, and all the other Estates of foceline late Earl of Northumberland, the Leffor shewed an Inquifition in the Time of Richard the Second, which found an Entail on the then Earl of Northumberland, and the Heirs Male of his Body, and derives his Title from Sir Inglaram Piercy, the third Son of Henry, the fifth Earl of Northumberland of that Name, and offered in Evidence the Baronage of England, wrote by Sir William Dugdale King at Arms. Sed non allocatur. Afterwards he offered divers Depositions taken de bene esse in Chancery without the Defendant's Answer, which were rejected by the Court for that Reason. And it was agreed, That the Court was not obliged to admit of fuch Evidence. But by Maynard, who was Counsel for the Defendant, The Course in that Case is to have an Order in Chancery, to oblige the other Party to admit of such Evidence, but that does not oblige the Courts of Common Law. T. Jones 164. Piercy versus -

75. In Evidence to an Effex Jury at the Bar in Ejestment. Maynard for the Defendant offered an Exemplification under the Great Seal in 1588. of Depositions in Chancery, whereby a Conveyance made in 86 and loft, was proved. And the Court agreed, That being fo old, and the Records of the Rolls burnt fince, it is good Evidence, though the Bill and Answer were not in it, which by Twisden and Maynard was used but thirty Years last past, and before it was not usual to inferr the Bill and Answer; and this was given in Evidence in a former Trial here at Bar, though it appeared to be a Bill of Discovery by Francis Moor against Richard Moor his Father, under whom the Plaintiff claimed as Heir, the Defendant as Purchaser, because the Depositions of fuch

fuch are never published without Notice given to both Parties. 2 Keb. 31. Blower versus Ketchmere.

76. Nota; It was faid by Justice Ellis, That it was refolved by the whole Court of B. R. in the Case of Dutton, upon a Trial at Bar concerning his Will forged by Mr. Colt, That Depositions taken in Chancery in perpetuam Rei memoriam, upon a Bill for that Purpose exhibited, cannot be given in Evidence at a Trial at Law, unless there be an Answer put in and produced; and so he faid, he had known it several Times resolved both

in B. R. and in C. B. Ray. 335. Anonymus.

77. To prove a Jointure, Depositions in Chancery were produced by the Plaintiff, which were offered to be read. The Bill and Answer being taken off the File and loft, they offered to give an Account that it was once filed, which was by the Six Clerks Book, and produced an Enrolment of the Decree, which mentioned both Bill and Answer. And the Court was of Opinion, that the Jointure-Deed being loft, they might supply the Proof by Memorials thereof, fince it was impossible to shew the Deed it felf, and the Plaintiff had a Verdict. 5 Mod. 110. Barley's Cafe.

78. The great and main Reason why Depositions taken in the Court of the Counsel at Tork in Case of Freehold, were not allowed to be read here, was because the Court, where they were taken, was not holden competent in a Case of this Nature. Hob. 109. The King and the Lord Hunfdon versus Countess Dowager of Arundel and the Lord William Howard.

79. On Evidence to a Jury, Hutton faid, That Depositions in a Court, which is not a Court of Record, as the Spiritual Court, although it be a Cause of which they have Juridiction, shall not

be read here; but by the other three Judges contra. But they all agreed, That Depositions taken in the Counsel at Tork or Marches of Wales, shall not be admitted; and afterwards they agreed with Hutton in that Case, because it never was done, they would not make a Precedent. Lit. 167.

Anonymus.

80. It was moved by Serjeant Wylde, That Depositions taken in the Ecclesiastical Court, might be given in Evidence in a Trial ar this Court; and the Court was against it, because they were not taken in a Court of Record. And they faid, although the Parties were dead, yet they ought not to be allowed. And by Banks Ch. J. No Depositions ought to be allowed, which are not taken in a Court of Record. And Foster and Reeve were of Opinion, That although the Parties would affent to it, yet they ought not to be given in Evidence against 'the constant Rule in fuch Case. Crawley held the contrary, for he said, That a Writing, which by the Law is not Evidence, might be admitted as Evidence by the Consent of the Parties. Mar. 120. Anonymus.

81. Sir Tho. Dawby brought an Action on the Case against a Parish-Clerk; and in this Case, Depositions taken in the Ecclesiastical Court, were admitted to be read in Evidence, because the Witnesses were dead; but it was denied the Jury to have these Depositions with them. Clay.

62. Dawby's Cafe.

82. It was agreed by all the Judges, That if a Witness, who was examined by the Coroner, be absent, and Oath is made that they have used all their Endeavours to find him, that is not sufficient to authorize the Reading of his Examination. Kelynge 55. Quære post Holt's Opinion in Breedon's Case contra.

Case any of the Witnesses, which were examined before the Coroner, were dead, or unable to travel, and Oath made thereof, that then the Examinations of such Witnesses so dead or unable to travel, might be read, the Coroner first making Oath, that such Examinations are the same he took upon Oath, without any Addition or Alterations whatsoever. Kelynge 55. 1 Lev. 80. Brum-wiche's Case.

84. On an Indictment of Murder it appeared, That one of the Witnesses, who was examined before the Coroner of the Verge, was gone beyond Sea, as it was supposed by the Procurement of the Defendants, on which it was doubted, whether this Deposition might be read? And it was ruled it should; for being beyond Sea is the same as if he were dead as to this, and accordingly it was read: But the Opinion of all the Court except the Ch. J. was, That a Deposition taken before a Justice of the Peace, ought not to be allowed in fuch a Case, for the Authority of the Coroner super visum Corporis is very great, and in some Cases, is a Record that cannot be traversed. It was moved by the Ch. J. That the Footmen who were found Not guilty, and against whom no Evidence had been given of Misbehaviour or ill Language, but only that they were waiting on their Lord, should be examined for the Preservation of their Testimony against other Offenders, was refused by the other Judges, who faid they had no other Authority in this Case, but as Justices of the Peace. T. 70. 53. Thatcher and Waller's Cafe. Kelynge 55.

85. On an Information tried at the Bar by a Bristol Jury against one Samuel Pain, a Minister there, setting forth, That the Defendant was the

Com-

Composer, Author, and Publisher of a most malicious and wicked Libel against the late Queen Mary, which was styled her Epitaph; upon Not Guilty pleaded, the Case upon the Evidence appeared to be thus: That Pain wrote the Libel, it being dictated to him by another. That he afterwards put it into his Study, and by Mistake delivered it to one Brereton instead of another Paper, who transmitted a Copy thereof (through feveral Hands) to the Mayor of Briftol, which occasioned the Mayor to fend for Brereton to examine him: which he did upon Oath, but not in the Presence of Pain. Brereton was now dead. and the Question was, Whether his Depositions taken before the Mayor, should be given in Evidence at this Trial? The Counsel for the Defendant infifted, That it could not be done by Law, because Brereton being dead, the Defendant had loft all Opportunity of cross-examining him; That this Case was not like an Information before a Coroner, or an Examination by Justices of the Peace of Persons accused, and afterwards committed for Felony, because they have Power by a particular Statute, to take fuch Examination both of the Fact and Circumstances, and to put it in Writing, and certify it at the next General Gaol-Delivery. But Depositions of this Nature, are never allowed to be read as Evidence in a Civil Cause, and much less in a Criminal Cause; that before the making those Statutes, no fingle Justice had Power to take Informations of Witnesses against Criminals, neither could the Conservators at Common Law take fuch Depositions. They might remove or fecure the Disturbers of the Peace, and the Justices of Peace may now prepare Business for the Sessions; but they have no Jurisdiction before the Indictment is found; but if

at any Time before the Statute they had taken fuch Examinations, they were never given in Bvidence against the Party. To which it was an-Iwered, That the Statute makes no Difference in this Case, for the Power of a Justice of Peace to take Examinations is not grounded upon it; he might examine a Criminal by Virtue of his Office, and the Statute doth only inforce the Execution of his Office, by commanding him to take fuch Examinations, that if he had committed it to Writing, and transmitted it to the Gaol-Delivery, it would have been given in Evidence to convict the Party; and the Reason why such Examination shall be read, is not by Virtue of any Statute-Law, but by the Authority of the Person before whom the Oath is taken; and if fuch Oath should be false, the Party might be indicted for Perjury. The Court thereupon fent the puisne Judge to confer with the Justices of the Common Pleas, who returning, the Ch. J. declared, That it was the Opinion of both the Courts, that these Depositions should not be given in Evidence, the Defendant not being present when they were taken before the Mayor, and fo had loft the Benefit of a Cross-Examination. 5 Mod. 161. Rex verfus Pain.

86. That Depositions taken in Chancery de bene esse only, are good Evidence at Law, where
the Witness dies before Answer. See the Case of
Howard versus Tremain, 1 Salk. 278. viz. On a
Bill exhibited in Chancery to perpetuate a Testimony, the Desendant who was Heir at Law, stood
in Contempt and would not Answer; and thereupon the Plaintiss had a Commission, and examined Witnesses to the Matter of his Bill De bene esse,
and the Desendant joined in the Commission
(which I conceive implyed an Appearance) and
Cross-

Cross-examined some of the Witnesses produced for the Plaintiff; and before the Answer came in the Witnesses died: And on a Trial in Ejectment in which the Plaintiff made Title under this Will. the Question was, Whether these Depositions could be given in Evidence? And a Verdict was taken for the Plaintiff, but the Poftea was stayed till the Opinion of the Court was had on this Point. And it was not questioned but if the Defendant had answered, and these Depositions had been taken after Answer, they had been good Evidence against the same Parties, and those that claim under them: And per Eyre J. It might be very inconvenient if this should not be allowed as Evidence; for how otherwise can a Devisee prove his Right in many Cases, if he may not examine Witnesses in perpetuam rei memoriam ; for the Heir at Law will not answer to the Plaintiff's Bill; and on the other Side, he will not call in Question the Title of the Devisee as long as there are any witnesses alive to prove the Will; but as foon as they are Dead, he will then commence his Suit. See 1 Show 363. S. C.

87. But Note; Such Depositions in perpetuam Rei Memoriam, are not Evidence in any Case as long as the Witnesses are living; as was agreed in the Case of one Tilley, I Salk. 286. where on a Trial at Bar, this Point arose, viz. Such Depositions having been taken in Chancery, it afterwards happened, That the Inheritance of the same Lands descended to the Person who was sworn as a Witness, and he was now a Party to the Suit in Ejectment; and the Question was, Whether those Depositions could be read in the Cause? Trevor Ch. J. held (at first) that they ought, for that he was disabled to give Evidence by the Act of God; so that 'twas in Effect the same thing as if he were Dead;

but Tracy and Blencowe were contra: Whereupon Tracy came into B. R. to ask the Opinion of that Court. And the Court agreed, That they ought not to be Read: For per Holt Ch. J. The only Intent of fuch Depositions is to perpetuate Testimony in case the Witnesses died, and they cannot be read in any Case between other Parties, till after the Death of the Witness, who is to appear and give his Testimony Viva voce as long as he lives; much less can they be read in this Case. where the Witness himself is a Party. To which Trevor then agreed.

88. That Depositions before a Justice of Peace. if the Deponent die, may be good Evidence in Cases of Felony, but in no Case else, see a Salk.

281. and Q.

TO H DOOLED TERM OF A LONGE 89. On an Appeal from the Commissioners of Excise to the Commissioners of Appeals, according to 12 Car. 2. c. 23. The Question was, if the Depositions of the Witnesses, and their Examination written down by the Clerk of the Commissioners of Excise should be allowed to be read in Evidence on this Appeal, or whether the Witneffes should not be again personally produced and examined viva voce: The Commissioners of Appeals thought the Depositions sufficient, and they proceeded thereupon; and a Prohibition being mov'd for in B. R. was denied at first, because this had been the Course ever fince the Statute, and it was (thereby to be) a fummary Proceeding; that it would occasion Trouble and Delay to the Revenue to bring in all the Witnesses again; and it was but proper the Commissioners of Appeals shall have just the same Evidence the Commissioners of Excise had. So it is in an Attaint, and the Law does not make viva voce Evidence necessary, unless it be before a Jury.

Jury. (2, a Justice of Peace?) In other Cases Depositions may be Evidence; if it were not for in this, they would be to try the Matter de novo; instead of trying an Appeal, (Note; This was Mich. 8 W. 3.) But afterwards, Palch. 9 W. 3. B. R. The Court chang'd their Opinion, and held, That the Commissioners of Appeal ought to examine the Witnesses de novo on the Appeal: that so was the Intent of the Act, and that the Commissioners had to that End a Power given them to administer Oaths; that this was just, because the first Sentence might be by Default, or the Depositions might misrepresent, or not reprefent the whole Case; and upon Appeals from the Orders of Justices, an Examination is always de novo, and a Prohibition was granted. But Holt said, his private Opinion was, That if the Wit-nesses were dead, they might use their Depositions. Breedon vers. Gill, 2 Salk. 555. See 5 Mod. 271. S. C. Where a Copy of a Conviction before Commissioners of Excise was allow'd as good Evidence, without producing the Excise-Book. Fuller and Fotch, Carth. 346. Vide ib. 220. Rex verf. Fames, where Copies of Affidavits taken before Commissioners were allow'd to prove Perjury, F3c.

90. Depositions of Witnesses before Commissioners in Chancery are not to be allow'd as sufficient Evidence to convict one of Perjury, &c. See Comberba. 38. The King against Baspole.

Ommission of Bankruptcy, shall not be given in Evidence in a Suit, in which the Question is, Whether he was bankrupt or not bankrupt, or to prove any Thing depending on it, because the other Party could not cross-examine the Person that made the Deposition. 2 Rol. Abr. 679. 3.

92. An

Ochancery by one dead, was produced in Court, but not suffered to be read, but as a Note or Letter, unless the Plaintiff would produce a Witness to swear, That he was present when the Oath was made before the Master. 3 Mod. 36. Goodier versus Smith.

93. An Order of the Court of Chancery is not to be given in Evidence, without producing a Copy of the Bill on which it was made; and a Commission out of Chancery to abut and abound certain Lands, returned and acquiesced under, and an Enjoyment accordingly, is good Evidence of the Land so bounded being rightly bounded; but a bare Commission returned without more, is no Evidence at all. 6 Mod. 146. Turner versus Nurse.

94. It was resolved by the Court, That a Decree in Chancery or any other Court of Equity, is no Evidence in a Court of Common Law, as in Walsingham's Case. 1 Sid. 75. Marret versus Sty.

95. By Twisden, Decretal Order under the Seal of the Exchequer, which recites all the Proceedings; or Exemplification under the Great Seal hath been allowed to be read as Evidence; but by Aloyn, not unless it have the Bill and Answer. which Wyndbam agreed : But by Twisden, Where the Decree is produced only in Paper, then the Bill and Answer ought to be adjoined, but not fo when the Decree is under Seal: And in C. B. Stiff against Stiff, the Judges admitted a Decree to have been under Seal, and yet would not allow it without Bill and Answer. And by Aloyn, it is usual to disallow such Decrees, but an Exemplification of the Chancery per Cur. always recites the Bill and Answer. Moreton Serjeant said, he never did fee the Seal of any Court denied to be given

given in Evidence. An Interlineation without any Thing appearing against it, will be presumed to have been made at the Time of the making the Deed, and not after. I Keb. 21. Trowel verfus Caftle.

96. A Decree of the Court of Wards not being under Seal, cannot be given in Evidence.

2 Rol. Rep. 457. Anonymus.

and Got a 97. On a Modus fuggested to pay every tenth Day's Milk, from April till November, skimmed, and then made into Cheese, in Lieu of all Tithe of Milk; a Prohibition was granted to try this Modus, and fettle the Matter; and after long Argument as to the Goodness of the Modus, (and many Cases cited) Mr. Eyre came and shewed, That the Prohibition was tested the 20th of November, and that fix Months, i. e. Kalendar Months (as they ought to be) were expired the 29th of May last; and therefore he moved for a Consultation, because in all that Time they had not proved their Suggestion; and 'twas granted on the Statute of Ed. 6. which is express, That the Suggestion shall be proved within fix Months; and the Court agreed, That the Statute extends as well to Suits for small as for great Tithes; and that the fix Months are to be computed from the Tefte of the Writ, and the Case in Mo. 573. where 'tis faid there must be fix Months in Term-time for proving the Suggestion, was denied. Foy versus Lister, Salk. 554.

98. In Cases of Tithes, &c. If the Plaintiff be a Parson, Vicar, or other Ecclesiastical Person. and claims the Tithes in Right of the Church or Benefice whereof he is Incumbent, he is in Strictness bound to prove his Institution and Induction, and all Things else required by Law to qualify him to be the Incumbent of the Church to

which the Tithes belong; and yet if such Plaintiff hath been for several Years in Possession, he is not ordinarily put to prove those Matters, unless the Defendant in his Desence shews some Reasons why the same ought to be proved, &c. But the Law has not determined how many Years such Plaintiff ought to be in Possession, to excuse his being put to such Proof. But that seems to be left to the Judge's Discretion, tho' I

conceive three or four Years may fuffice.

99. In a Suit for Tithes in the Spiritual Court. the Defendant pleaded, that the Plaintiff (the Parson) had not read the thirty-nine Articles, and the Court put the Defendant to prove it, tho' a Negative; whereupon he moved for a Prohibition, which was denied; for in this Case the Law will prefume, that a Parson has read the Articles; for otherwise he is to lose his Benefice; and when the Law presumes the Affirmative, then the Negative is to be proved. 1 Rol. Rep. 83. And it has been frequently ruled at the Affizes, That all Things necessary to make the Defendant a compleat Incumbent, unless the Plaintiff by some Evidence to the contrary puts the Defendant upon proving those Matters, see Clayton's Rep. 83. And yet in the Case of Ejectment for a Rectory in I Sid. 220. the Court feemed to be of Opinion, That Admission, Institution, Induction, Reading the Articles, &c. ought to be proved, and that the Admission, Institution, and Induction, upon the Presentation of a Stranger, is sufficient Evidence to bar the Plaintiff in an Ejectione firme, and to put him to his Quare Impedit.

Tithes, the Plaintiff must prove, That the Lands lie within his Parish, and that the Corn, &c. growing thereon was carried away, and by whom,

and must also prove the Value of the Corn, &c. And if the Plaintiff be a Lessee, he must also prove his Leafe; and yet after a long Possession fuch Lease need not be proved, nor need he prove what Estate his Lessor had at the Time of the Leafe made. I Sid. 220. And where he must prove his Title, fee Strode and Birt's Case. The Defendant on the other Side ought to prove, That the Tithes were justly fet out, and the Modus or Custom of Tithing within that Parish; and if the Tithes are once fo duly fet out, and after taken away by a Stranger, without Fraud in the Defendant, the Defendant or Owner of the Land is not chargeable. The Defendant may also prove, That the Plaintiff obtain'd his Living by Simony, or did not read the Thirty-nine Arsicles, &c. or is guilty of some Act or Omission, which makes his Benefice void; or he may prove a Leafe or Grant of the Tithes, or some Agreement or Composition, or a Modus Decimandi, or that the Benefice is above 81. Value per Annum, and that the Plaintiff has accepted another Living without a Dispensation, &c. See the Law of Tithes 424, 5.

fiastical Court in a Suit there for Tithes, althor the Witnesses are dead, are to be allowed as E-vidence in an Action brought at Common Law, thor in the same Cause. But a Sentence given in the Ecclesiastical Court concerning Tithes, may be given in Evidence in an Action at Common Law, for that is a judicial Act. Mich. 13. Car. B. R. inter Comitem Sarum and Sir Broket Spencer, per Cur. 2 Rol. Ab. 679. Pl. 6. See Black-

bam's Case infra.

Thing concluded in the Ecclesiastical Court

touching Lands, cannot be given in Evidence at a Trial at Law for Land. Style 10. Betsworth

verfus Bet [worth.

103. In Trover, upon Evidence at a Trial before Holt Ch. J. at the Sittings in Middlesex, the Case was, the Plaintiff prov'd himself possessed of the Goods, and that they were taken away by the Defendant. The Defendant shewed, That they were the Goods of Jane Blackham in her Life-time, and that he had taken out Letters of Administration to her, and so was intitled to the Goods. Upon this the Plaintiff proved, That fome few Days before her Death, the faid Jane was actually married to him; and in Answer to that it was infifted, That the Spiritual Court had determined the Right to be in the Defendant; for they could not have granted Administration to the Defendant, but upon supposing there was no fuch Marriage, and that this Sentence being of a Matter within their Jurisdiction was conclufive, and could not be gainfaid in Evidence. And by Holt Ch. J. A Matter which has been directly determined by their Sentence cannot be gainfaid; their Sentences are conclusive in fuch Cases, and no Evidence shall be admitted to prove the contrary; but that is to be intended only in the Point directly tried; otherwise it is if a collateral Matter be collected or inferred from their Sentence, as in this very Case, where, because the Administration is granted to the Defendant, therefore they infer that the Plaintiff was not the Defendant's Husband; as he could not have been taken to be, if the Point tried in their Court had been Married or Unmarried, and their Sentence had been Not married. Blackbam's Case, I Salk. 290.

prove a Day Sunday, &c. 1 Cro. 227. Page verfus Fawcet, S. C. 1 Leon. 242. Sid. 300. Copeney versus Phelps. 6 Mod. 41. Dom. Regin. versus Dyer. 6 Mod. 81. Burrough versus Perkins.

Lands, that the shewing of the Will under Seal, and proof that it was examined by the Original is good Evidence, without shewing the original

Will. Clay. 57. Lodge's Cafe.

to6. The Will under which Title is made, must be shewed to the Court it self, and not only a Copy, which they resuse to admit. I Keb. 117.

Eden versus Chalkill.

Writing either by Force of the Statute of Wills, or at Common Law by Custom, and that Will is proved in the Spiritual Court per Testes, yet the Probate of that Will, nor the Depositions which were taken for the Probate, are not to be given in Evidence at the Common Law to prove the Will and the Devise of Land, because that Probate as to the Land being a Freehold, is coram non judice, although the Probate was good as to the Personal Estate devised by the same Will. Hill. 10 Car. B. R. between Brett Nettar and Stephen Brett, 2 Ros. Ab. 678. Pl. 1.

Common Pleas in Ireland, in Ejectment, this Queftion arose upon a Bill of Exceptions which was preserved, because the Judges there would not direct the Jury, that the Probate of a Will before the Archbishop of Canterbury in whose Province the Testator died, and also before the Bishop of Fernes, was sufficient and concluding Evidence, but only that they were good Evidence, and so left it to the Jury. To which the other Side

Side shewed in Evidence Letters of Administration of the Goods under the Seal of the Primate of Ireland; the Thing in Question was, a Lease for Years in Ireland, claimed by the Lessor of the Plaintiss under the said Administration; and on the first opening of the Cause Judgment was affirmed. T. Jon. 146. Philips versus Chichester,

S. C. Ray. 405.

109. In Trover and Conversion brought by an Executor, the Defendant pleaded ne ung; Executor, and on this Issue was taken and tried in London, and a Will under the Seal of the Ordinary was offered in Evidence, which Seal was not denied by the Defendant; but the Defendant offered to prove that the Original Will was forged; which was opposed, because the Will of Goods and Chattels is to be examined in the Spiritual Court, and only determinable there whether good or not; and the Court was of Opinion, That nothing should be given in Evidence against what was really adjudged in the Spiritual Court, and therefore the Defendant may give in Evidence, that it is not the Seal of the Ordinary but a forged Probate, and admitting it to be the Seal of the Ordinary, he may give a Revocation in Evidence, because this Evidence is in Affirmance of Spiritual Proceedings; and on this Hue the Defendant may give in Evidence, that there are bona notabilia, but may not shew the Testator was non compos Mentis. Sid. 359. Noel versus Wells, S. C. 1 Lev. 180. S. C. 2 Keb. 337.

110. On Plene Administravit pleaded, the Account given to the Ordinary, shall not be given in Evidence or any regard had unto it. Pas. 7 fac. Mildmay versus Dean, per Cur. 2 Rol. Ab. 678. 3.

pleaded, an Inventory of the Goods was given in

K a Evidence

Evidence to the Jury as the Goods were appraised by Upholsters. 4 Leon. 243. Arden vers. Goad. 112. To the End that Vicars and Curates may the better make appear the Certainty of the Aug-

mentations to small Vicarages and Curacies: By

29 Car. 2. c. 8. It is enacted,

'That every Archbishop, Bishop, Dean and Chapter respectively, on or before the 29th Day of September in the Year 1677. shall cause every Leafe or Grant whereon any fuch Augmentation is made, to be fairly entered in a Book of Parchment to be kept by their respective Registers for that Purpose, and every Dean, Archdeacon, Prebendary, or other Ecclefiastical Person, respectively, shall cause every Lease or Grant whereon any such Augmentation hath been made, by himself, his Predecessor or Predecessors, to be entered in the faid Books, to be kept by the Register of the Bishop of the Diocese; for the entering whereof no Fee shall be paid, nor any Thing demanded, fave only a reasonable Reward to the Clerk for entering the same, not exceeding five Shillings: Which faid Entry being examined by the respective Archbishop, Bishop, or Dean, and by them refpectively attested in the faid Book, to be a true Copy of the original Lease or Grant, and that the Augmentation in the same was intended for such Use, shall be as a Record; a true Copy whereof, proved by Witnesses to be a true Copy, shall be deemed, taken, adjudged, and expounded to be good and fufficient Evidence in the Law; whereupon the faid Vicars and Curates respectively, shall and may by Virtue of this Act from Time to Time, recover the Bee nest of such Augmentations. 29 Car. 2. c. 8. € fect. 4.

113. In

That the Book of any Merchant is no good Proof, nor may be allowed to be read touching any Debt due to him; but of any Debt against himself it may be good enough; which was agreed per Cur.

I Keb. 27. Crouch verfus Drury.

114. On a Trial at Bar for Lands in the County of York, upon Ejectment, the Lessor of the Plaintiff made Title under a Gift in Tail made by Edward the second, to Robert de Clifford and the Heirs of his Body; and to prove himself Heir of the Body of the faid Robert, he produced a Pedigree by which the Discent appeared; and Sir William Dugdale and other Heralds being fworn, declared, That the Pedigree was deduced out of Records and antient Books in the Office of Heralds; but the Court would not allow that for Evidence, without shewing the Records and Books from whence it was abstracted, and afterwards an antient Book was shewn by them, which ended in the Year 1582, which was allowed for Evidence and confirmed the Pedigree. King verfus Foster, T. 70. 224.

stion was, upon the Time of the Commencement of a Lease, which was to commence upon the Determination of a Lease then in Being to Queen Elizabeth: And to prove such a Lease to the Queen, an ancient Book, in which were Entries of Leases of the Premisses ever since Henry VIIth's Time, and found among the Evidences of the Bishops, (this being Bishop's Land) was offered and opposed, because not such good Evidence as they might have had; because this being to the Queen must have been inrolled, and then they might have brought a Copy of the Inrolment. And tho' it was answered, That to prove the Lease

Lease a good Lease, it would be necessary to produce a Copy of the Involment, because without Involment the Queen could not take, yet to prove a Lease in Fact, this would be good Evidence, and that it was what it was offered for. Per Cur. Involment is better Evidence of a Lease in Fact than the Book, ideo must be produced. 6 Mod. 248. Stilling sleet versus Sir H. Parker.

Action against the Earl of Torrington, for Beer sold and delivered; and the Evidence given to charge the Defendant was, That the usual way of the Plaintiff's dealing was, that the Draymen came every Night to the Clerk of the Brew-house, and gave him an Account of the Beer they had delivered out; which he set down in a Book kept for that Purpose, to which the Draymen set their Hands, and that the Drayman was dead, but that this was his Hand which was set to the Book: And this was held good Evidence of a Delivery; otherwise of the Shop-book it self singly without more. Price versus Earl of Torrington, Salk. 285.

the Trial by Nisi prius for Middlesex, before Holt Ch. J. Where a Shop-book was allowed for Evidence, it being proved that the Servant who wrote the Book was Dead; and that this was his Hand; and he accustomed to make the Entries therein; and no Proof required of the Delivery of the Goods: On which the Chief Justice said, it was as good Evidence as the Proof of a Witness's Hand to an Obligation. And he said, tho the Statute 7 fac. 1. c. 12. says a Shop-book shall not be Evidence after the Year, &c. yet it is not of it self Evidence within the Year. Pitman verfus Madox, Salk. 690.

118. For the preventing Tradefinen and Handicraftimen who keep Shop-books, from demanding Debts of their Customers upon their Shopbooks long Time after the fame hath been due. and when as they have supposed the Particulars and Certainty of the Wares delivered to be forgotten, then either they themselves or their Servants have inferted into their faid Shop-books divers other Wares supposed to be delivered to the fame Parties, or to their Use, which in Truth never were delivered, and this of Purpose to increase by such undue means the said Debt: And whereas divers of the faid Tradefmen and Handicraftsmen having received all their just Debt due upon their faid Shop-books, do oftentimes leave the faid Books uncroffed, or any way discharged, fo as the Debtors, their Executors or Administrators, are often by Suit of Law enforced to pay the same Debts again to the Party that trusted the faid Wares, or to his Executors or Admihistrators, unless he or they can produce sufficient Proof by Writing or Witnesses, of the faid Payment, that may countervail the Credit of the faid Shop-books, which few or none can do in any long Time after the faid Payment: By 7 7ac. 1. c. 12. It is enacted.

That no Tradesman or Handicrastsman keeping a Shop-book as is aforesaid, his or their Executors or Administrators, shall be allowed, admitted or received to give his Shop-book in Evidence in any Action for Money due for Wares
hereaster to be delivered, or for Work hereaster to be done, above one Year before the same
Action brought, except he or they, their Exe-

cutors or Administrators, shall have obtained or given a Bill of Debt, or Obligation of the Debtor

for the faid Debt, or shall have brought or pur-

fued against the faid Debtor, his Executors or Administrators, some Action for the said Debt Wares, or Work done, within one Year next after the same Wares delivered, Money due for Wares delivered, or Work done. Provided always that this Act, or any Thing therein contained, shall not extend to any Intercourse of Fraffick, Merchandizing, Buying, Selling, or other Trading or Dealing for Wares delivered or to be delivered, Money due, or Work done, or to be done, between Merchant and Merchant, Merchant and Tradesman, Tradesman and Tradesman, for any Thing directly falling within the Circuit or Compass of their mutual Trades or Merchandize; but that for fuch Things only, they and every of them shall be ' in Case as if this Act had never been made;

any Thing herein contained to the contrary not-

withstanding. 7 7ac. 1. c. 12.

119. A Difference arifing between the Impropriator and the Parishioners concerning the Right of a House, he brought an Ejectment, and by his Counsel moved the Court, that the Churchwardens, who had the Custody of the Parishbooks, might produce them, fo that he might have a Sight thereof, and Copies of what concerned his Title; and this was compared to the Cafes of Corporations and Copyholders, who upon fuch Motions have frequently obtain'd Rules of this Court for the Steward to grant Copies, and that the Court-Rolls might be produced at Trials. It was likewise said, That if the Plaintiff should exhibit a Bill against the Church-wardens, he would have an Account of the Parish-books: But. the Court were of Opinion, that this Case differed from that of Copyholders, because all the Tenants of the Manor have an Interest in the Court-Rolls:

Rolls; but here the Impropriator hath a distinct Interest from the Parishioners; for it was not a parochial Right, but a Title which is now in Question; and therefore it was not Reason that the Parish Books should be produced, which would be to shew the Defendant's Evidence. Then as to Church-wardens, they are not a Corporation without the Parson. 5 Mod. 395. Cox versus Cop-

ping.

ordered that the Book of Transfer of Stocks, and other Books, of the East-India Company, should be produced at a Trial to be had the next Day at Guild-ball, or that the Parties might have Copies of what part of them they pleased to give in E-vidence; it being a Cause between Parties having Stock there; concerning which the Action was brought. And per Cur', There is great Reason for it; for they are Books of a Publick Company, and kept for publick Transactions, in which the Publick are concerned; and the Books are the Title of the Buyers of Stocks by Act of Parliament; and it was granted. Farresly 129. Gery versus Hopkins.

121. In an Action of Trespass, The Parties were at Issue, and at the Trial by Nisi prius, in the County of Devon, to prove the Nonage of the Plaintiff at the Time of the Lease made (which he would avoid) a Church-book was given in Evidence. I Cro. 411. Vicary versus Farthing. S. C. Mo. 451.

122. Note; Upon Evidence to a Jury, between Bret and Ward, upon the Diffolution of a Vicaridge, in the County of Warwick, which was Part of the Priory of Dantry, where the Pope by his Bull gave to the Vicar minutas decimas & alteragium; and it was certified by the Doctors, that alteragium will pass to the Vicar, Tithe-Wool, &c.

And the Usage was shewed in Evidence, and the Copy of the Pope's Bull; and the Court would not credit that, without seeing the Bull it self; and so the Party was Nonsuit, and the Jury was dis-

charged. Winch 70. Bret verfus Ward.

123. If an Issue be taken whether Lands belong to a Priory or not, 'tis good Evidence to shew they are not mentioned in the Certificate, because when Priories were suppressed, a Commission issued, and all their Lands and the Value thereof were certified thereon. Lit. 36. Anonymus.

Hands, who was Counsel for the Lord who was Plaintiff, was admitted good for the Copyholder; but contra of short Notes by way of Breviat, which the Court agreed; and also, that finding by special Verdict, or Admission, on former Pleading is good Evidence, unless the contrary appear.

1 Keb. 720. Lee verfus Boothby.

defex, might bring in an Inventory of Goods, taken in Execution by Fieri facias, for Evidence (in Trover) of the Value of the Goods, which the Court granted in a Suit between other Parties, the Sheriff being not charged, albeit he be not compellable on such a Writ, but only on Extent; and he agreed to bring it at the Trial if he could find it. 2 Keb. 277. Pl. 39. Baxter & Cramfield versus Seix.

Question was, If one was of full Age at the Time of his Will made by him? And upon Evidence it appears that he was born the 14th of Feb. 1608, and he made his Will when he was of the Age of twenty-one Years within two Days; and to prove his Nonage, the Defendant produced an Almanack, in which his Father had writ the Nativity

of

of the Devisor, and it was allowed to be strong Evidence. Ray. 84. Herbert versus Tuckall.

Evidence of an Entry a Note thereof, subscribed by the Person that entered, and the Witnesses thereto were dead, and their Hands only proved, and that it was done by Direction of Hyde, Justice of the C. B. who testissed it; which after some Doubt the Court would not admit, without proving actual Entry, especially being to avoid a Fine; but they admitted what Hyde said, as a good Inducement to the Jury, but no convincing Evidence. I Keb. 502. Fryer versus Combe.

128. In an Action upon the Case for taking the Profits of the Under-Clerk of the Treasury, a Note obtained by the Lord Finch, Master of that Office formerly, of the Officers Subscription, that they were but Servants, which by Allen for the Plaintiff, is no more than some Parishioners Subscription to pay Tithe in Kind, which will not bind others; which the Court agreed, and refused to let it be given in Evidence, especially Part being cut off. 1 Keb. 258. Whitchurch and Paget.

ry, the Countel of the King, to prove a Retainer, offered in Evidence a Copy of the Retainer, which was entered in the Court of Faculties, but was not allowed by the Court; but the Oath of one who had seen the Retainer, under the Hand and Seal of the Countess of Derby, was held good Evidence, because the Plaintiff was a Stranger to it. Lit. 1. King versus Frankwell.

130. In Evidence to a Jury to prove J. S. to be Heir to J. S. the Court would not accept of a Pedigree drawn by a Herald at Arms as Evidence, nor would they suffer the Jury to have it with them

them. Paf. 8 Jac. 1. Plumpton versus Robinson,

I Rol. Abr. 686. Pl. 2.

131. In Debt for Rent, on Reference to the Secondary to see if all were paid, he reported that a Receipt of the last half Year's Rent was shewed in Discharge of all former Arrearages; but per Cur', This is only Evidence of Payment of all, but it is no Discharge of the former Arrear, unless it be under Hand and Seal, and then but by E-stoppel. 2 Keb. 346. Coomes versus Denne.

132. It feems the King cannot be a Witness in a Cause by his Letters under his Sign Manual. Hob. 213. In the Chancery contra. 1 Rol. Abr.

686. Pl. 1.

133. Parol Proof of what a Prisoner confess'd before the Council, not admitted except his Confession be signed by himself; and that voluntarily and without Oath. Vide ante, and Cases in L. and Eq. 1 Part, 89. And yet see there 83 and 89, Papers sound in a Prisoner's Custody read against him.

Evidence (that Money paid by Colonel, who was faid to be Bankrupt the 25th of February 166, was the Defendant's Money) by Titus, fent by the King for this Purpose, which the Court denied; this being a Difference between Party and Party; but where the Matter only concerneth the King, his Testimony were good. 2 Keb. 349. Litcot versus Backwell.

of Interest paid upon a Bond, be an Evidence that such Interest is paid. Cases in Law and Equity,

1 Part, 279.

136. An Answer in Chancery, not to be Evidence at Law; either for the Party or against a third Person. Ibid. 181.

137. Nor are any Proceedings in the Spiritual Court to be Evidence at Law, where the Title of Lands is in Question. Ibid.

CHAP. VI.

Of Evidence on the General Isue:

1. Where a Defendant may plead the General Issue, and give the Special Matter in Evidence, see Cases in Law and Equity,

1 Part, 120.

2. Whenfoever a Man cannot take Advantage of the Special Matter by Way of Pleading, there he shall take Advantage of it in the Evidence. For Example; the Rule of Law is, That a Man cannot justify the Killing or Death of a Man; and therefore in that Case he shall be received to give the Special Matter in Evidence, as that it

was Se defendendo, &c. Cok. Lit. 283.

3. Warner brought an Action of Debt against Wainsford, Administrator of Kirby, who pleaded a Retainer. The Plaintiff demurred in Law, because it amounted to the General Issue of Pleinement Administer. But the better Opinion of the Court was, that this is no Cause of a Demurrer, for the Plea is sufficient, and besides it is some Matter in Law, which bath been allowed always to be pleaded especially, and not lest to the Jury; and the Reason of pressing a General Issue, is not for Insufficiency of the Plea, but not to make long Records where there is no Cause, which is Matter of Discretton, and therefore is to be moved to the Court, and not to be demurred upon.

Hob. 127. Sir Henry Warner versus Wainsford.

14 H. 6. 23. 21 H. 6. 13.

4. Blainfield brought Trover as Administrator. and declared upon the Possession of the Intestate, and on Not guilty, the Counsel for the Defendant offered to give in Evidence at the Trial, That the pretended Intestate made a Will and an Executor. But Holt Ch. Just. over-ruled it, and took this Diversity; where an Administrator brings Trover upon his own Possession, there the Defendant may give in Evidence a Will, and an Executor, upon Not guilty; but otherwise where 'tis on the Possession of the Intestate (as in this Case), for there the Defendant ought to plead it in Abatement; and if he does not, he shall not give it in Evidence on fuch General Issue. See the Case of Blainfield versus March, 1 Salk. 285. and

Farrefley 181.

5. In an Assumpsit on a Bill of Exchange, the Defendant pleaded, that he was a Gentleman, and went beyond Sea only to travel; and traversed his being a Merchant, and to this the Plaintiff demurred. It was faid, that the Plea amounted to the General Issue; for if the Matter of it would avail the Defendant, it might be given in Evidence on Non Assumpsit. To which it was answer'd, That it was no General Rule, that a Matter could not be pleaded specially, which might be given in Evidence upon the General Iffue. In an Action of Debt for Rent, an Entry and Suspension of the Rent may be given in Evidence, upon Nil Debet; yet 'tis always allowed to be pleaded, and fo Nil babuit in Tenementis: and where-ever the Matter pleaded contains Matter of Law, it is allowed to be pleaded, tho' it might be shewn upon the General Issue. And of

that Opinion was the Court. 2 Vent. 297. Sarf-

field versus Witherly, S. C. Show. 125.

6. A Man in many Cases may plead Special Matter to avoid the Plaintiff's Action, tho' he might give it in Evidence upon the General Issue; as in Debt upon a Bond against a Feme Covert, she may plead Coverture, or give it in Evidence upon Non est fastum. 5 Mod. 175. Hus-

ley versus Facob.

7. In Trover on Not guilty pleaded it appeared in Evidence, That the Defendant was Tenant by the Curtefy of Lands in Ireland, and had cut down and fold the Trees from off the Estate, and that the Reversion belong'd to the Plaintiff and two others in Coparcenary; and upon a Cafe made for the Opinion of the Court, it was refolved in B. R. Anna, I. That in local Actions, as in Trespass Quare clausum fregit, the Plaintiff cannot prove a Trespass but where he lays it. nor lay it in any other Place than where it is, But it is otherwise in Actions transitory, as Trover: Ergo in this Case he may lay the Converfion here, and prove it to be in Ireland. See Style 331. (285). 2dly, That one Jointenant or Tenant in Common, or Parcener, cannot bring Trover; and if he does, it is good Evidence on the General Issue of Not guilty. But if one Jointenant brings Trover against a Stranger, in that Case the Defendant may plead it in Abatement, but cannot take Advantage of it in Evidence. (See 2 Lev. 113. Cro. Eliz. 554.) Brown versus Hedges, 1 Salk. 290.

8. In an Action on the Case for Money had and received to the Plaintiff's Use, it appear'd upon Evidence, that Layfield and the other Defendants were Bankers and Partners, and that the Plaintiff had given Layfield 20 s. for which

5113

he receiv'd a Ticket in the Double-Exchange Lottery, and Layfield undertook to pay what Benefit should happen thereupon; That the Ticket came up a 40 l. Benefit, and for that Money the Action was brought against Layfield and Partners : and it was objected for the Defendants, That it did not appear that any of them had undertaken to be Truftees in the Lottery but Layfield; and therefore he only ought to be charged, and not his Partners. To which Holt Ch. J. answered, That it appeared they were Partners in their Trade and Goldsmiths, and that the Adventurers put their Money in upon the Credit of the feveral Goldsmiths that had undertaken to pay the Benefits; and it should be presumed, That the Act of Layfield was the Act of the others, and should bind them, unless they could shew a Disclaimer or Refusal to be concern'd in it. Layfield's Case, I Salk. 292.

o. In an Action upon the Case on Trover of certain Loads of Corn at Henden in Middle fex, and the Conversion of them; the Defendant pleaded. That before the Conversion, he was seised of certain Lands called Harminglow in the County of Stafford, and that the Corn whereof, &c. was there growing, and that he did fever it, by Force of which he was possessed, and the same cafually loft; and that the same came to the Hands of the Plaintiff, and the Plaintiff casually lost the same, and the same came to the Hands of the Defendant at Hendon aforesaid, and he did convert the fame to his own Use, as it was lawful for him to do; upon which the Plaintiff did demur in Law. Atkinson: The Plea is good; for the Conversion is the Point of the Action, and the Effect of it: For if a Man take the same, and do not convert, he is not Guilty. And here the

the Defendant doth justify the Conversion; wherefore he cannot plead Not guilty. The General Issue is to be taken where a Man hath not any Colour; but here the Defendant hath Colour, because the Corn whereof, &c. was growing upon his Land, which might inveigle the Lay-People; and therefore it is fafest to plead the Special Matter. But admit that it doth amount but to the General Issue; yet there is not any Caufe of Demurrer, but the Plaintiff ought to shew the same to the Court, and pray that the General Issue be entered; and the Court Ex Officio ought to do it. And to this the Court agreed, and faid, That notwithstanding the Plaintiff ought not to demur. I Leon. 178. Ward and Blunt's Case, S. C. I Cro. 146. Said to be adjudged otherwise; but I conceive it to be a Mistake.

10. In Trespass Quare clausum fregit, Not guilty was pleaded, and the Desendant on the Trial gave in Evidence, That the Place where, was a Highway; and per Cur. This is a Special Justification, and ought not to be allow'd to be given in Evidence on the General Issue. And Holt Ch. J. said, That in Case for disturbing the Plaintiff of his Common, on Not guilty pleaded, he had known the Desendant permitted to give in Evidence, That he had a Right of Common there; but he never thought it right, and never allow'd it. Watson versus Sparks, 1 Salk. 287.

II. Tho' a Plea doth amount to the General Issue, yet for that Reason alone the Plaintiss hath no Cause of Demurrer; for the Desendant may well disclose the Matter of Law in Pleading, which is a much cheaper Way than to have a Special Verdict; and this is on the same Reason as giving Colour; but if the Matter, by which

L 2

the Defendant justifies, be all Matter of Fact, and proper for the Trial of a Jury, then the Defendant ought to plead the General Issue. Per totam

Cur'. 2 Mod. 274. Birch verfus Wilson.

12. In an Action of Debt upon the Statute of 5 & 6 Ed. 6. c. 14. concerning Ingroffers, It was held by Hale, Ch. Baron, That any Thing in the same Statute, upon which the Suit is commenced, may be given in Evidence; but if it be in another Statute, it must be pleaded: But that fince the Statute 21 Fac. 1. upon the General Issue, any Thing may be given in Evidence, in Excuse of the Party; and thereupon the Plaintiff was nonfuited. Hardress 231. Hamond, qui tam, versus Taylor. W. 70. 320. Rex versus Pen. 27 H. 8. 21.

13. By an Act I Fac. 1. c. 15. for the better Relief of Creditors, against such as shall become

Bankrupts, it is enacted, 'That if any Action of Trespass, or other Suit, shall happen hereafter to be brought against any Commissioner, authorized by the Statute made in Decimo Tertio of our late Sovefreign Lady Queen Eliz. for Bankrupts, or any other Person or Persons, having Authority by Virtue of, or under the Commission, authorifing the faid Commissioner for the doing or executing of any Matter by Force of the faid Statute, or this present Statute, That the Defendant or Defendants in any fuch Action or Suit, may plead Not guilty, or otherwise justify that the Act or Thing, whereof the Plaintiff or 6 Plaintiffs complained, was done by the Authofrity of the faid Act, made 13 Eliz. or in this f present Act respectively, without expressing or

rehearling of any other Matter of Circum-

ftance contained in either of the faid Acts, and

without

without enforcing him or them to shew forth their Commission, authorising the said Act or Thing; whereunto the Plaintiss shall be admitted to reply, That the Desendant did the Fact supposed in the Declaration, of his own Wrong, without any such Cause alledged by the said Desendant; whereupon the Issue in such Action shall be joined to be tried by Verdict of twelve Men; and upon the Trial of

that Issue, the whole Matter to be given on both Parties in Evidence, according to the very

Truth of the same; and if Verdict upon such Issue shall pass for the Defendant, the Defen-

dant to have his Costs. 1 fac. 1. c. 15. fect. 16.
14. By an Act 1 fac. 1. c. 23. for the Pre-

fervation of the Fishing in the Counties of Somerset, Devon, and Cornwall, it is enacted,

'That if any Action of Trespass, or other Suit, shall at any Time hereafter happen to be attempted and brought against any Person or

Persons, for entring and going on the Land for

watching of the faid Fish, or for balking, huing, conding, directing or guiding of the said

Fishermen in their Boats upon Sea or Sea-coast, for the taking of the said Fish, or for the land-

ing of the faid Fish, as aforesaid, by Authority of this present Act, the Desendant or Desen-

dants in any such Action or Suit, shall and may

plead Not guilty for any Thing doing by Virtue of this Act. And upon the Trial of that Issue,

the whole Matter to be given on both Parties

in Evidence, according to the very Truth of the fame. 1 7ac. 1. c. 23. fect. 4.

15. In an Act made 7 fac. 1. c. 20. for the speedy Recovery of many Thousand Acres of Marsh-Ground, and other Ground within the Counties of Norsolk and Suffolk, lately surrounded

L 3

by the Rage of the Sea in divers Parts of the faid Counties; and for the Prevention of the like Sur-

rounding hereafter, there is this Clause:

And be it further enacted, That if any Action of Trespass, or other Suit, shall happen to be sattempted, and brought against any Person or e Persons, for taking of any Distress, making of any Sale, imprisoning of any Person or Perfons, or any other Thing doing by the Authority of this present Act, the Defendant or Defendants in any fuch Action or Suit, shall and may either plead Not guilty, or otherwise make Avowry, Cognizance or Justification, for the taking of the faid Distress, making of Sale; imprisoning, or other Thing doing by Virtue of this Act, alledging in fuch Avowry, Cognis zance or Justification, that the said Diftress. Sale, Imprisonment, or other Thing whereof the Plaintiff or Plaintiffs shall complain, was done by Authority of this Act, and according to the Tenor, Purport and Effect of this Act, without any Expressing or Rehearfal of any other Matter of Circumstance contained in this s present Act; to which Avowry, Cognizance or · Justification, the Plaintiff shall be admitted to reply, That the Defendant did take the faid Diffress, make the faid Sale or Imprisonment, or did any other Act supposed in his Declaration, of his own Wrong, without any fuch · Cause alledged by the said Defendant, whereupon the Iffue in every fuch Action shall be o joined, to be tried by Verdict of twelve Men, and not otherwise, as is accustomed in other Personal Actions; and upon the Trial of that Iffue, the whole Matter to be given on both Parties in Evidence, according to the very 4 Truth of the fame. 7 7ac. 1. c. 20. fett. 20. 16. For

16. For Ease in Pleading against many causeless and contentious Suits which have been, and daily are commenced and prosecuted against Justices of Peace, Mayors, or Bailiss of Cities or Towns Corporate, Headboroughs and Port-Reeves, Constables, Tithingmen, Collectors of Subsidies and Fisteens, who for due Execution of their Office have been troubled and molested, and still are like to be troubled and molested by evil-disposed contentious Persons, to their great Charge and Discouragement in doing of their Offices; by 7 fac. 1. c. 5. it is enacted,

'That if any Action, Bill, Plaint, or Suit upon the Case, Trespass, Battery or false Imprisonment shall be brought, after forty Days next after the End of this Session of Parliament, in any of his Majesty's Courts at Westminster, or elsewhere, against any Justice of Peace, Mayor or Bailiff of City or Town Corporate, Headborough, Port-Reeve, Constable, Tithingman, Collector of Subfidies or Fifteens, for or concerning any Matter, Caufe or Thing, by them or any of them done, by Virtue or Reason of their, or any of their Office or Offices, that it fhall be lawful to and for every fuch Justice of Peace, Mayor, Bailiff, Constable, or other Officer or Officers before named, and all others, which in their Aid or Affistance, or by their Commandment, shall do any Thing touching or concerning his or their Office or Offices, to plead the General Issue that he or they are Not guilty, and to give fuch Special Matter in Evidence to the Jury, which shall try the same; which Special Matter being pleaded, had been a good and fufficient Matter in Law to have difcharged the faid Defendant or Defendants of the Trespass, or other Matter laid to his or their Charge: And that if the Verdict shall pass with " the L4

the said Defendant or Desendants in any such Action, or the Plaintiff or Plaintiffs therein become Nonsuit, or suffer any Discontinuance thereof, that in every such Case, the Justices or Justice, or such other Judge before whom the said Matter shall be tried, shall by Force and Virtue of this Act allow unto the Desendant or Desendants, his or their double Costs, which he or they shall have sustained, by Reason of their wrongful Vexation in Desendant or Desendants shall have like Remedy as in other Cases, where Costs by the Laws of this Realm are given to the Desendants. Tac. 1. c. 5.

17. Another Act 21 Jac. 1. c. 12. was afterwards made to enlarge and perpetuate the foregoing;

and is as follows. Whereas an Act, intitled, An Act for Ease in Pleading, against troublesome and contentious Suits, profecuted against Justices of the Peace, Mayors, Constables, and certain other his Mafiefty's Officers, for the lawful Execution of their · Office, made in the 7th Year of his Majesty's most happy Reign of England, was made to conf tinue but for seven Years, which by Experience hath fince been found to be a good and profitable Law; Be it therefore enacted by the King's 6 most excellent Majesty, the Lords Spiritual and 4 Temporal, and the Commons in this present Parliament affembled, and by the Authority of the same, That the said Act shall from and after the End of this present Session of Parlia-6 ment, be perpetual, and have Continuation for ever. And be it further enacted by the Autho-Frity aforefaid, That all Church-wardens and all Persons, called Sworn Men, executing the Office of Church-wardens, and all Overfeers of she

the Poor, and all others which in their Aid and Affistance, or by their Commandment, shall do any Thing touching or concerning his or their Office or Offices, shall hereafter be enabled to receive, and have fuch Benefit and Help by Virtue of the faid Act, to all Intents, Conftructions and Purposes, as if they had been specially nae med therein. And whereas notwithstanding the faid Statute, the Plaintiff is at Liberty to lay his Action, which he shall bring against any Justice of Peace, or other Officer in any Foreign Country, at his Choice, which hath proved very Inconvenient to fundry of the Officers and Persons aforesaid, that have been impleaded by some contentious and troublesome Persons in Counf tries far remote from their Place of Habitations: Be it therefore enacted by the Authority aforefaid, That if any Action, Bill, Plaint, or Suit upon the Case, Trespass, Battery, or false Ime prisonment, shall be brought after the End of 6 this prefent Session of Parliament, against any Iustice of Peace, Mayor, or Bailiff of the City or Town Corporate, Headborough, Port-Reeve, Constable, Tithingman, Collector of Subsidy or Fifteens, Church-wardens and Persons called Sworn Men, executing the Office of Churchwarden or Overseer of the Poor and their Deputies, or any of them, or any other which in their Aid and Affistance, or by their Command-6 ment, shall do any Thing touching or concerning his or their Office or Offices, for or concerning any Matter, Caufe, or Thing by them, or any of them done, by Virtue or Reason of their, or any of their Office or Offices, that the faid Action, Bill, Plaint or Suit, shall be laid within the County where the Trespass or Fact shall be done and committed, and not elfewhere, and

that it shall be lawful to and for all and every Person and Persons, aforesaid, to plead thereunto the General Issue, that he or they are Not guilty, and to give fuch Special Matter in Evidence to the Jury, which shall try the same, as in or by the faid former Act is limited or declared; and that if upon the Trial of any fuch Action, Bill, Plaint, or Suit, the Plaintiff or · Plaintiffs therein shall not prove to the Jury which shall try the same, that the Trespass, Battery, Imprisonment, or other Fact or Cause of his, her, or their fuch Action, Bill, Plaint, or Suit, was or were, had, made, committed, or done within the County wherein fuch Action, Bill, Plaint or Suit shall be laid, that then in every fuch Case, the Jury which shall try the fame, shall find the Defendant and Defendants in every fuch Action, Bill, Plaint or Suit, Not guilty, without having any Regard or Respect to any Evidence given by the Plaintiff or Plaintiffs therein, touching the Trefpass, Battery, Imprisonment, or other Cause, for which the fame Action, Bill, Plaint or Suit, is or shall be brought. 21 7ac. 1. c. 12.

18. In an Act 21 Jac. 1. c. 12. for the Ease of the Subject in Informations upon Penal Statutes,

there is this Claufe:

And be it also enacted by the Authority aforefaid, That if any Information, Suit or Action,
fhall be brought or exhibited against any Person
or Persons, for any Offence committed, or to be
committed, against the Form of any Penal Law,
either by, or on the Behalf of the King, or by
any other, or on the Behalf of the King and
any other, it shall be lawful for such Defendants
to plead the General Issue, that they are Not
guilty, or that they owe nothing, and to give

fuch special Matter in Evidence to the Jury that fhall try the fame; which Matter being pleaded, had been a good and fufficient Matter in Law to have discharged the faid Defendant or Defendants against the faid Information, Suit of Action, and the faid Matters shall be then as available to him or them to all Intents and Purpofes, as if he or they had fufficiently pleaded, fet forth or alledged the fame Matter in Bar. or Discharge of such Information, Suit or Action. Provided always that this Act, or any Clause contained therein, shall not extend to any Information, Suit or Action, grounded upon any Law or Statute made against Popish Recufants, or for or concerning Popish Recufancy, or against those that shall not frequent the Church and hear Divine Service; nor to any Information, Suit or Action for Maintenance, Champerty, or buying of Titles, nor to any Suit or Information grounded upon the Statute made in the first Year of the Reign of our Sovereign Lord the King, of a Subfidy granted to the King, of Tonnage, Poundage, Wool, &c. onor for or concerning the concealing or defrauding the King, his Heirs or Successors, of any ' Custom, Tonnage, Poundage, Subsidy, Impost, or Prisage, or for transporting of Gold, Silver, Ordnance, Powder, Shot, Munition of all Sorts, Wool, Woolfells or Leather, but that fuch Offence may be laid or alledged to be in any County, at the Pleasure of any Informer; any Thing in this Act to the contrary not withftanding. 21 7ac. i. c. 4. fect. 4, 5.

19. And where the King by his Prerogative might enforce the Subject in Informations of Intrufion, brought against them, to a Special Pleading of their Title, it is enacted,

That whenfoever the King, his Heirs and Successors, and fuch, from or under whom the King claimeth, and all others claiming under the same Title under which the King claimeth, hath been or shall be out of Possession by the Space of Twenty Years, or hath not or shall onot have taken the Profits of any Lands, Tenements or Hereditaments, within the Space of Twenty Years before any Information of Intrufion brought or to be brought, to recover the fame; That in every fuch Case, the Defendant or Defendants may plead the General Issue, if he or they fo think fit, and shall not be pressed to plead specially, and that in such Cases the Defendant or Defendants shall retain the Posfession he or they had at the Time of such Information exhibited, until the Title be tried, found or adjudged for the King. And that where an Information of Intrusion may fitly and aptly be brought on the King's Behalf, that no Scire facias shall be brought whereunto the Sube ject shall be forced to a Special Pleading, and be deprived of the Grace intended by this Act. 6 21 7ac. 1. c. 14.

20. In an Act 3 fac. 1. c. 4. for the better difcovering and repressing of Popish Recusants, there

is this Clause:

And be it further enacted, That if any Action or Actions, shall at any Time hereafter be commenced, or brought against any Person or Persons doing, committing or commanding any Act or Thing, for or concerning the Execution of this present Statute, or any Article or Clause therein contained, That then every Desendant in such Action or Actions may plead the General Issue, and be received to maintain the same by any Evidence that shall prove his Do-

ings and Proceedings warrantable by this Law.

3 7ac. 1. c. 4. fect. 38.

21. In an Act 3 fac. 1. c. 10. for the Rating and Levying of the Charges for conveying Malefactors and Offenders to the Gaol, there is this Clause:

And be it enacted, That if any Action of Trefpass, or other Suit, shall happen to be attempted or brought against the Person or Persons, for taking of any Diffress, making of any Sale, or any other Act by Authority of this present Act, the Defendant or Defendants in any fuch Action or Suit, shall and may either plead Not guilty, or otherwise make Avowry, Cognizance, or Justification, for the taking of the faid Diffress, making of Sale, or other Act, by Virtue of this Act, alledging in fuch Avowry, Cognizance or Justification, that the faid Distress, Sale, Trefpass, or other Thing, whereof the Plaintiff or Plaintiffs complained, was done by Authority of this Act, and according to the Tenor, Puroport and Effect of this Act, without any Expressing or Rehearfal of any other Matter of Circumstance contained in this present Act; to which Avowry, Cognizance or Justification, the Plaintiff shall be admitted to reply, That the Defendant did take the said Distress, made the faid Sale, or did any other Act or Trespass fupposed in his Declaration, of his own Wrong, without any fuch Cause alledged by the said Defendant; whereupon the Issue in every such Action shall be joined to be tried by Verdict of twelve Men, and not otherwise, accustomed in other Personal Actions; and upon the Trial of that Issue, the whole Matter to be given on

both Parties in Evidence, according to the very

22. In an Act 21 Fac. 1. c. 20. to prevent and reform prophane Swearing and Curfing, there is this Claufe: 110 15 10

And be it further enacted. That if any fuch Offender shall commence any Suit in Law asgainst any Officer or other, for such Distrainsing, Sale of Goods, Whipping, or fetting in the Stocks, the Defendant or Defendants may plead 4 the General Iffue, and give the Special Matter in Evidence to the Jury at the Trial. 21 7ac. 1. . c. 20. fett. 2.

23. In an Additional Act 20 Car. 2. c. 7. against the Importation of foreign Cattle, there are

these Two following Clauses:

And be it further enacted by the Authority aforesaid, That if any Action, Bill, Plaint, Suit or Information, is or shall be commenced, or f profecuted against any Person or Persons, for any Service or other Thing made or done, or to be made or done, by Virtue or Colour of this, or the aforesaid Act; and upon the Trial of such Action, Bill, Plaint, Suit or Information, it 6 shall not be prov'd to the Jury that shall try the fame, that the Cause of such Action, Bill, Plaint, f or Suit, or Information, did arise within such 6 County where fuch Action, Plaint, Suit, or Information is laid and tried, the Defendant and Defendants shall be found Not guilty, without having Regard to any Evidence given by or for the Plaintiff, Informer, or Profecutor. And be it further enacted by the Authority aforesaid, That if any Action, Bill, Plaint, Suit, or Information hath been, or shall be commenced or profecuted against any Person or Persons, for any Seifure or other Thing done, or made, or to be done, or made, in Pursuance or Execution of this, or the aforesaid Act; such Perfon or Persons so sued in any Court whatsoever, may plead the General Issue, and give this and the aforesaid Act in Evidence for their Excuse or Justification. 20 Car. 2. c. 7. sett. 7, 8.

24. By an Act 12 Car. 2. c. 23. for a Grant of certain Impositions upon Beer, Ale, and other Liquors, for the Encrease of his Majesty's Re-

venue during his Life, it is provided,

That if any Person or Persons shall at any Time be sued or prosecuted for any Thing by him or them done or executed in Pursuance of this Act, he or they shall or may plead the General Issue, and give this Act in Evidence for his Defence. 12 Car. 2. c. 23. sect. 35. and the like Clause in all other like Acts.

25. For the Relief of Collectors of Publick Money, their Affifants and Deputies, by 13 & 14 Car. 2.

c, 17. it is enacted,

'That all Collectors, and other Persons who have levied or collected, or shall levy or collect any Sum or Sums of Money, or other Act done or shall do in order to the same, by Virtue of any Act of Parliament now in Force, or of any other Act, Order or Ordinance, allowed to be oput in Execution by any fuch Act of Parliament as aforefaid; and who is, or shall be fued for. or concerning the same, by any other than the King's Majesty, his Heirs and Successors, he or they may plead the General Issues, and thereupon give the Special Matter in Evidence for his Excuse and Justification: And that all and every fuch Person and Persons already sued or impleaded for any the Causes aforesaid, may notwithstanding any Plea or Demurrer already made by any fuch Defendant have Liberty to change such his Plea, and to plead the General ,suffl ? of this, or the aforefaid Act; (fuch Per,

Iffue, if he shall think fit so to do. 13 8 14

Car. 2. c. 17. fett. 1.

26. In an Act 27 Car. 2. c. 1. for the better and more easy Rebuilding of the Town of Northampton, there is this Clause;

5 And lastly it is enacted, That if any Person or Persons shall be fued or impleaded for any

Matter or Thing done in the Execution of this

Act, or in Pursuance thereof, he or they may e plead the General Iffue, and give the Special

Matter in Evidence, 27 Car. 2. c. 1. feet. 11. 27. In an Act 4 Ann. c. 15. for making the

River Stower navigable, from the Town of Maningtree in the County of Effex, to the Town of Sudbury in the County of Suffolk, there is this Claufe :--

And be it further enacted by the Authority

aforefaid, That if any Action, Suit or Information shall be commenced or profecuted against

any Person or Persons, for any Thing that he

or they shall do or cause to be done in Pursu-

ance of this Act, and executing any of the Or-

ders and Directions herein mentioned; all and

every Person and Persons so sued or prosecuted

in any Court whatfoever, shall and may plead

the General Issue, and give this Act and the

Special Matter in Evidence. 4 Anna, c. 15.

· fect. 9.

28. And this is now a usual Clause in all Acts of Parliament for making Rivers navigable, amending Highways, erecting Turnpikes, and other Acts of the like Nature. See also the Stamp-Acts 5 & 6 W. 3. &c. That Deeds, &c. are not to be receiv'd as Evidence till stamped, and the Construction made thereon. Cafes in Law and Equity, 1 Part, 365. 551 or ha mid no commit could be one expert of the out the CHAP.

CHAP. VIL

Of Evidence in Actions on the Case on Promises.

1. THE Consideration must be proved. 1 Cro. 201. Smith versus Hitchcock. Het. 50.

Anonymus, &c.

2. The Court declared their Opinion, That no Evidence of Account will maintain an Indebitatus assumpsit on Money delivered to a Factor, who often have Discharges of greater Value, and so involve the Court which they will not allow in Ex motione Winnington to alter the Visne; and it was said so to be ruled in Guild-ball last Sitting 2 Keb. 781. Lincoln versus Parr. 1 Mod. 268. Farrington versus Lee. Per North Ch J.

3. It was adjudged in the King's Bench, That if an Action is brought on an Indebitatus assumptit, and the Defendant plead Non assumptit, the Plaintiff cannot give in Evidence a Specialty to prove the Debt, as a Bond or a Lease by Indenture and Rent arrear; because, he may sue an Action for the Debt grounded on the Specialty; but he ought to give in Evidence Matter of Contract or Receipt, without Specialty. Moor 240. Anonymus. 2 Cro. 505. Bennus versus Guyldley, &c.

4. In an Assumpsit for Money lent, and likewise for Money laid out to the Use of the Defendant's Wife Dum sola. Upon Non assumpsit pleaded, the Defendant at the Trial offered to give in Evidence, the Infancy of the Wife at the Time of the Promise: Which the Ch. J. Treby (who tried it)

doubting of, it was referred to him by Confent as a Case, who thereon consulted with the rest of the Judges, and Ten of the Judges being present, they all agreed, That upon the general Isfue, fuch Evidence hath been of late admitted. And the Chief Justice in giving his Opinion said, 'twas true that in the Books fuch Resolutions are not to be found; for that Actions on the Cafe have not been fo common till of late. And that as to the Objection, that the Plaintiff may at this rate be furprised, who may be supposed to come prepared to prove nothing but his Debt; the fame Objection might be made against allowing Payment to be giyen in Evidence, in Case of an Affampsit in Law, (admitting there was a Difference between an express Affumpfit and an Affumpfit in Law; and that upon an express Special Affumpfit, Infancy can't be given in Evidence upon the General Issue) yet he faid, That supposing in this Case there had been an Express Assumpsit to pay the Money, or the Money laid out; this had been void, it being no more than the Law implied upon the lending and laving out. And he further faid, That the Promise of an Infant is absolutely Void, (as suppofed to be made without due Consideration): But a Bond taking its Effect by Scaling and Delivery, is consequently a more deliberate Act; and therefore is only Voidable. Darby verius Bourcher, I Salk. 279.

5. Where on Non assumptit, a Condemnation in a Foreign Attachment may be given in Evidence, and where it must be Pleaded, see the Case of Brook versus Smith, at Nist prius in Middlesex, coram Holt Ch. J. 1 Salk. 280 viz. In an Assumptit, Evidence was given, That the Debt was attached by the Custom of London, before the Action brought, and a Condemnation had thereon before

before Plea pleaded; and it was urged, that this should relate so as to deseat the Action. But 'twas Ruled per Cur', That if an Attachment and Condemnation be before the Writ purchased, it may be given in Evidence on the General Issue: Because it is an Alteration of the Property before the Action brought. But if the Attachment only be before the Writ purchased, it ought to be pleaded in Abatement of the Writ: And if the Condemnation be after the Action commenced and before the Plea pleaded, then it may be pleaded in Bar; but shall not be given in Evidence on Non assumpsit pleaded, for that the Property is not altered until Condemnation. See I Salk. 280.

6. In an Action on the Case for Money had and received to the Plaintiff's Use, upon the Evidence it appeared, That the Plaintiff was Executrix, and that the Money was paid to the Defendant, as due to her; and that the Plaintiff was Nonfuited; because the Action ought to have been brought by the Husband and Wife as Executrix: For it being paid without any Authority from the Husband, it remains as a Debt due to the Executrix; and if the Husband dies, the Wife may bring an Action for it: But if the Money had been received by Authority from the Hufband, then it had been as his Receipt, and as his Money, and the Action might well have been brought in his Name, and the Money would have been Assets in her Hands, Q. I Salk. 282.

7. If a Husband and Wife cohabit, and the Wife deals separately, her Contracts shall charge the Husband; for Cohabitation is sufficient Evidence of Notice. 6 Mod. 162. Lang ford versus Administrator of Tyler.

8. An Indebitatus assumptit was brought for 201.

as Executor to William Burroughs, for so much of

M 2 the

the said William's Money, had and received by the Defendant in his Life-time; whereupon the Plaintiff had Judgment by Nil dicit; and upon a Writ of Inquiry, the Plaintiff not being provided to prove the Debt, (supposing it to be confessed by the Judgment) the Jury sound but Two-pence Damages. Ventris moved to set aside this Writ of Enquiry. Cur', This being in an Action upon the Case, which lies in Damages, the Debt ought to have been proved; and so let it stand. 1 Ven. 347. Reve versus Cropley.

9. Per Cur', If an Executor suffer Judgment to go against him by Default, upon executing a Writ of Enquiry he shall not give Evidence of Want of Assets, for he is estopped, as if it had been the Case of an Heir; for he should have pleaded Plene Administravit, or specially what Assets he has.

6 Mod. 308. Treil versus Edwards.

dence it did appear, that Part of the Money was paid, and the Judge did hesitate, if the Plaintiss had not failed in his whole Case, because the Consideration is not as he hath made his Case to be; but after he was satisfied the Law was otherwise, and gave Direction that the Plaintiss should recover the Residue of the Money not paid; but it seems otherwise where the Considerations were several; as for the Price of a Horse sold to the Defendant, and for Money lent, and one Action for both; there both must be proved to be due. Clay. 145. Linley's Case.

on Trial before Hale in Middlesex, he permitted the Defendant to give in Evidence that he was under Age at the Time of the Promise; on which the Plaintiff was nonsuited. 2 Lev. 144. Seaton ver-

fus

fus Gilbert. 2 Keb. 851. Paynter versus Boreman.

3 Keb. 798. Tapper verfus Davenant.

12. Feme Covert may plead Non assumpsit, and give Coverture in Evidence, because Coverture makes it no Promise; so she may plead Non est Factum to a Bond, and give Coverture in Evidence. 6 Mod. 230. Anonymus.

and Non assumpsit for ten Pounds, Money lent, and Non assumpsit pleaded, and the Judge gave way in this Case to prove Payment before the Action brought; which if the Desendant can do, then there was no Consideration to charge him in

this Action. Clay. 71. Blesbie's Cafe. Diego 02

14. In Assumpsit for Wares sold, it appeared upon the Evidence, that Part of the Wares were delivered after the Time in the Declaration mention'd, yet the Plaintiff did recover for the Refidue; see by me in these Actions for divers Wares fold, (where the Parcels do not appear in the Declaration) how the Defendant in another Action brought for the same shall defend himself, and it feems he shall plead this Recovery, and aver it to be for the same Wares formerly sued for; and then give in Evidence in the second Action that Proof and Evidence given by the Plaintiff in the first; for therein the Plaintiff doth and ought to prove the Parcels fold in particular, which are laid generally in the Declaration, and by that Means it will appear to be the same. Clayt. 143. Tenkinson versus Porne.

15. In an Assumpsit for 101, due for Corn sold to four Men, and the Evidence proved the Sale to be made only to two; this was holden against the Plaintiff that he did not prove his Case. Clar.

114. Anonymus.

16. Assumpsit for the Price of a Beast, the Plaintiff declared that the Agreement was to pay so much

much as the Beaft should be reasonably worth, and the Witness proved the Agreement to be, that the Defendant would give Content for it; and this was ruled good Evidence to prove the Promise laid. and in common fense the Words amount to fo much. Clay. 148. Bland versus Tenant.

17. If a Master always gives his Servant Money to buy his Markets with, it is good Evidence to discharge the Master in an Action brought against him for Goods taken upon Trust by that Servant. Per Glyn Ch. J. Mich. 1658. at Guild-ball, Sir Tho-

mas Roufe's Cafe. T. per pais. 181.

18. An Indebitatus affumpfit was brought by one, the Defendant gives Evidence that another was Partner with the Plaintiff at the Delivery of the Wares, and the Plaintiff was nonfuited. Franklin versus Walker, Norf. Lent Ass. 1667. Per Moreton. Contra in Trespass; for there Jointenancy

must be pleaded. T. per pais 187.

19. In an Indebitatus for carrying of Herrings: the Evidence was, that the Plaintiff was a Porter at Tarmouth, and when Herring Ships came home. he went (of his own Head) and carried up to the Defendant's House, with other Porters, so many Herrings; and good, by Twisden Judge of Assize. Norf. Sum. Aff. 1662. Fermin versus Lucas, T.

per pais 181.

20. In an Action upon the Case, upon a Promife to deliver to the Plaintiff in London fo much Money when he delivered him so many Broad Cloths there; the Defendant pleaded Non assumpfit, and it was found by Special Verdict that the Assumpsit was, That the Plaintiff should deliver a certain Number of Broad Cloths, some of one Colour, and fome of another; and the Court inclined to think the Evidence maintained the Declaration

claration upon this Issue. Moor 466. Cheny ver-

fhould be brought for 20 l. for Wares fold, and no Evidence should be given of an Agreement for the certain Price, I should direct it to be found especially. I Mod. 295. Demy versus Narris.

assumpsit pleaded, an express Promise must be proved. 3 Lev. 150. Johnson versus May.

23. In an Action on the Case, for the Profits of the Office of Master of the King's Wardrobe, it was said in an Action of this Nature, that it is not necessary to shew every particular Sum received by the Defendant; but it is a good Evidence for the Damage, to shew the Profits of the Office communibus Annis. 2 Ven. 170. Earl of Mountague versus the Lord Presen.

124. In an Action grounded upon a Promise in Law, Payment before the Action brought is allowed to be given in Evidence upon Non assumpsit. But where the Action is grounded upon a Special Promise, there Payment or any other legal Discharge must be pleaded. 1 Mod. 210. Fits & al'

verfus Freestone.

Assumpsit to secure Goods from Perils, those of the Sea excepted: In this Case it was held by the Court, that in Assumpsit in Fact, on a Non assumpsit pleaded, a Release cannot be given in Evidence to take away the Assumpsit, but only in Mitigation of Damages; but on Assumpsit in Law, and a Non assumpsit pleaded it may, because it takes away the Assumpsit. Quære, says the Reporter, If in an Assumpsit, either in Fact or Law, on a Non assumpsit pleaded, can Performance be given in Evidence. Sid. 236. Beckford versus Clark.

M 4

26. In

26. In an Assumpsit in Consideration of the Marriage of his Daughter, on Non assumpsit pleaded, Exoneravit cannot be given in Evidence, to discharge the Promise, but only in Mitigation of Damages; but it ought to be pleaded. Per Hale

2 Lev. 81. Abbot verfus Chapman.

27. Treby Ch. J. related a Case on the Clause of the Statute of Frauds, which fays, That no Action shall be brought upon any Agreement that is not to be performed within one Year from the making thereof; unless it be in Writing. The Case was, a parol Promise was to pay so much Money on the Return of fuch a Ship, which Ship happened not to return within two Years after the Promise made; and whether this parol Promise was void by the Statute of Frauds, was a Question before all the Judges, and they were of Opinion, That the Promise was Good, and not within the faid Clause of the Statute: For that by Poffibility the Ship might have returned within a Year; and tho' by Accident it happened not to Return within the Time, yet &c. And they faid, That the Clause of the Statute extends only to fuch Promifes, where by the express Appointment of the Party, the Thing is not to be performed within a Year. I Salk. 280.

28. Tho' in a Collateral Promise, which by the Statute of Frauds and Perjuries must be in Writing, tho' the Note need not be set forth in the Declaration, yet it must be given in Evidence. I. Jones 158. Case versus Barber, S. C. n. S. P.

Ray. 450.

29. In an Action on the Case for Fees, &c. the Defendant pleaded the Statute of 1 Fac. That no Bill was delivered under his Hand. Per Cur, This Statute may be given in Evidence on the General

General Isfue Non assumpsit. Show. 338. Millner,

an Attorney, verfus Crowdall.

30. So in Debt for Rent, on Nil debet pleaded, the Statute of Limitations may be given in Evidence; for the Statute has made it to be no Debt at the Time of the Plea; the Words whereof are in the prefent Tense. But in Case on Non assumpsit pleaded, the said Statute has been refused in Evidence: For there the Plea speaks of time past, and relates to the Time of the Promise. Per Holt Ch. J. 1 Salk. 278.

31. In Debt for Rent, if the Defendant pleads levy per Disiress, & sic nil Debet, a Release or Payment is good Evidence; for it proves there is no Debt, which is the Issue to be tried, (See Cro. Eliz. 140. agrees) and yet if the Defendant pleads Rasure, & sic non est Factum, nothing else is Evidence but Rasure, (for that appears by the Deed itself,) per Holt Ch. J. Gallaway versus Susab,

1 Salk. 284.

32. In Ejectment on a Trial at Bar, the Statute of Limitations was infifted on, and thefe Points were Ruled by the Court. 1. That the Possession of one Jointenant is the Possession of the other, fo far as to prevent the Statute of Limitations. 2. That a Claim or Entry to prevent the faid Statute, must be upon the Land; unless there be some special Reason to the contrary. 3. If one makes an Answer in Chancery which is prejudicial to his Estate, it may be given in Evidence against him, but not against his Alienee. 4. That the Recital of a Lease in a Deed of Release is good Evidence of such Lease against the Releafor and those that claim under him; but not as to others, without proving there was fuch a Deed, and that 'twas loft or destroyed. 5. If one Jointenant levies a Fine, tho' it fevers the

the Jointure, it does not amount to an Ouster of

the other Jointenant. Ford versus Grey.

and not denied by any one, That on a Special Request, alledged in the Declaration, that a Request at any other Time, the several Years before, may be given in Evidence: But on a sepius requisit, it was agreed, that a Request at any Time may be given in Evidence. Sid. 268. King

verfus Bray.

34. On an Assumpsit in Consideration the Plaintiff would deliver to J. S. ten Quarters of Malt, to pay for it on Request, if J. S. did not, and sets forth, that he did deliver it; J. S. did not pay for it, and that he requested the Desendant such a Day who had not paid it; and at a Trial at Middlesex, before Twisden and Wyndham, the Desendant would have put the Plaintiff to prove the Request, but the Judges would not suffer it; for the Request was traversable, and not being traversed is admitted, and the Issue is only on the Assumpsit, the Desendant having pleaded Non assumpsit. I Lev. 166. Anonymus.

certain, and the Day is past, the Plaintiff may declare to pay on Request: So if he declare on Payment at a certain Day, and give in Evidence a Promise or Request, i. e. when it is created on Account which gives the Duty, for there the Time is ex abundanti; but where the Action is founded on the Contract, otherwise; for there the Evidence must pursue the Contract. Hill. 1650.

B. R. Child's Case. T. per pais 184.

36. In Assumpsit for Money due, the Plaintiff laid it in his Declaration to be payable on Request, and by his Witness it did appear, that a Fortnight's Time was given for the Payment of

it, and though this Fortnight's Time was past long before this Action brought, yet now it was held a Failure in the Proof of the Plaintiff's Case,

as he had laid it. Cl. 115. Anonymus. Do to but

37. In Affumpfit for 20 l. upon Account, upon the Evidence it did appear to be another Sum than 201. and it was roled against the Plaintiff. and he was nonfuited; and the Judge held, Where an Action is for 10 l. upon a Contract for a Horse. and the Witness doth not prove the very Sum, but differs a Penny or twelve Pence, in this Cafe it shall be found against the Plaintiff; and cited the Opinion of Walter Ch. Baron, to be fo, but for the Importunity of the Counsel, he was contented a Special Verdict should be found. But the Court above did rule the Case against the Plaintiff, quod nota in assumpsit, where Damages only are to be recovered; for in fuch a Cafe. if Debt had been brought, it is clear, because he doth not hit the Contract, it shall be against the Plaintiff. Clay. 87. Ramsden's Cafe.

38. In an Assumpsit upon an Insimul computaverunt, and Non assumpsit pleaded, the Plaintiss produc'd a Writing signed without Seal, which testified the Debt, to prove his Case; but it was held no good Evidence, for it is another Thing, and he should have declared, quod Indebitatus assumpsit, &c. and upon this the Plaintiss was urged to be

nonsuit. Clay. 87. Kirbie versus Emerson.

39. Upon Assumpsit on Account, the Proof was, That the Plaintiff's Servant did demand such a Sum, prout, &c. of the Defendant, who did acknowledge the Debt, and this was holden good Evidence. Quod Nota. Clay. 98. Anonymus.

40. In an Insimul computasset, the Evidence shall not be on the Value of the Goods, but on the Account only. Latch 169. Wood versus Witherick.

by the Plaintiff for the Use of the Desendant, upon Non assumpsit pleaded, there was a Trial at the Bar; and the Evidence was, That the Desendant and another, now deceased, farm'd the Excise, that the Money was laid out by the Plaintiff on the Behalf of the Desendant and his Partner; and that the Desendant promised to repay the Money out of the first Profits he received. The Promise here was not to pay the Money absolutely, but sub modo, so that the Evidence did not maintain the Action; and the Plaintiff was non-suited. 2 Mod. 279. Tissard versus Wardoup.

42. The Plaintiff declared, That the Defendant in Consideration the Plaintiff would forbear his Suit against 7. S. for eighty Pounds which 7. S. did owe him, the Defendant would see him paid, and the Evidence proved that 7. S. did owe the Plaintiff forty Pounds, and it was holden, That the Evidence did not maintain the Declaration.

Clay. 111. Hargrave's Cafe.

43. In an Action upon a Promise, and Declaration, That the Desendant did assume and promise that the Desendant would not sue the Plaintess. And the Evidence was, That he would forbear his Suit. And this by the Judge doth suppose a Suit already begun, and so doth not maintain the Issue; and upon this the Plaintiss was

nonfuited. Clay. 2. Anonymus.

44. The Plaintiff declares, that whereas there was an Issue joined in Ejectione firmae, brought by the Lessee of the Plaintiff against the Defendant, which the Lessee intended to try at the next Afsizes, in Consideration the Plaintiff and his Lessee at the Assizes would forbear to enforce their Title, and give but weak Evidence against the Desendant, he promised to pay him a certain Sum of

of Money. On Non affumpfit pleaded, there was a Special Verdict, which found the Affumpfit in all Points, only there were two Issues joined in the Suit, and the Assumptit was in Consideration of Forbearance to enforce the Title at the Trial of both Iffues; and it was adjudged for the Plaintiff, because it is said in common Parlance that the Defendants have joined Iffue, Mo. 351. Blackwell versus Eyre, S. C. 1 Cro. 831.

45. The Plaintiff had taken a Diffress for Rent, and the Defendant promised, if he would re-deliver it to him, he would pay the Sum demanded for Rent; the Diftress was delivered, and now he fued for the Money upon the Promise, and the Plaintiff in this Cafe was put to prove there was Rent due, &c. Nota; For I did doubt because the Defendant hath Benefit by Re-delivery of the Diftress, &c. ergo. Clay. 139. Sir Tho. Gower ver-

fus Wilkinson.

46. In an Action on the Case on mutual Promises of Marriage, on Non assumpsit pleaded, you may give in Evidence any lawful Impediment, as being within the Levitical Degrees, for this voids the Promise, but a Præ-contract cannot be given in Evidence. 5 Mod. 411. Harrison versus Cage.

47. Upon the Evidence it appeared, the Defendant had a larger Legacy given him by the Will of J. S. than the Plaintiff did like of, and the Defendant in Confideration the Plainiff would forbear to move the Testator to make an Alteration of his Will, did promise the Plaintiff ten Pounds, and he averred de did forbear, &c. and did aver the Testator had Goods to the Value of Part of his Cafe. Quod nota; Though it be a greater Sum averred than needed. Clay. 139. Newfom's Cafe.

48. By Mountague Ch. J. If a Citizen of London Promises to his Daughter's Husband to give him a Child's Portion, by the Custom of London the Evidence between the Wife and the Children is certain enough, and it is known how much every Child shall have. 2 Rol. Rep. 104. Ano-

the of the Premile, he may give it in Lvi. summe

40. In an Action upon the Case, if the Plaintiff declare, That whereas 7. S. was indebted to the Plaintiff 11301. and after appointed the Defendant to pay the Plaintiff 1114 L in Satisfaction of Part of the faid Debt, and after 7. S. pays the Plaintiff 10501. Part thereof, and after in Confideration that the Plaintiff would forbear the faid 641 the Remainder of the 11141. until 7. D. paid him that Sum which was then due, affumed and promised to pay the said 64 % and avers Forbearance accordingly, and that 7. D. has paid the Defendant the faid 641. The Defendant pleaded Non assumplit; if the Promise is proved, the Defendant cannot give in Evidence, That 7. D. has not yet paid him the 641, because the Issue is only on the Promise, tho' otherwise there would be no Cause of Action. Mic. 16 Car. B. R. Adjudged between Holditch and Broderidge, by the Opinion of all the Judges in Serjeants-Inn, in Fleetfreet, besides Jones and my Lord Littleton, who feemed to be of another Opinion, and they faid, That this was like an Action of Covenant, altho I urged that there was in all Actions a General Iffue, which would put the whole Declaration in Iffue, and that there is no General Issue here but Non assumpsit; for he cannot plead Not guilty: But on the other Side it was faid, That the Payment of the 641. by 7. D. might have been traverfed and then the Promise had been confessed. 2 Rol. Abr. 681. 6. proise land

cutor, on an Assimpsit by himself to pay a Debt of the Testator's, if the Creditor would forbear till Michaelmas; if the Desendant plead Non assumpsit, and in Truth there was no Debt; or if there was one, the Executor had not Assets in his Hands at the Time of the Promise, he may give it in Evidence, and so help himself. 9 Co. Baines's Case, per Coke, this seems not to be Law. 2 Rol. Abr. 684.

pleaded non assumptit infra fen Annos, on which Issue was taken. The Plaintist proved a Debt of 9 & due ten Years before, and an Acknowledgment of the Debt within six Years, and an Offer to pay 5 & for the whole. Per Hale, The Plaintist was nonsuitd, for the Acknowledgment of the Debt is no more than is done by the Plea, but there must be a new Promise of the Debt within six Years, to make that Action hold; and here the Promise or Offer to pay 5 & gives no Action for the 9 & Bass versus Smith, Suffolk Summer Assizes, 1668. T. per pais 187.

52. On a Trial at Nisi prius before Holt C. J. It was held by him that the Plea Non assumpti infra sex Annos ante impetrat' br'is Original'. Repl. Ass. infra sex Annos ante impetrat' br'is præd. viz. such a Day, &c. There in Evidence you need not shew the Original; so in a Plene Administravit, where the Date is mentioned upon Record, there you need not shew it in Evidence, though it were only by way of, viz. —— Show. 272. Edwards versus Thompson. Vide ante, 131. 1 Salk. 278, 285, 6.

53. A Note had been made by the Defendant to the Plaintiff's Testator, above six Years before the Action brought, for Payment of Money; and upon Non assumpsit infra sex Annos pleaded, at the Trial before Holt Ch. J. the Plaintiff gave Evidence

dence of a Promise made to himself after the Arreft, and before the Bill exhibited; and whether this Evidence maintained the Declaration, was the Question: And the Case of Heylin versus Ha-Aings was remembered, wherein upon Conference with all the Judges of England, it was held, That a Promise after the fix Years brings the Matter out of the Statute of Limitations; that owning the Debt does not go fo far, but is Evidence of a Promise. Note; Here the Declaration was of a Promise to the Testator, and the Promise given in Evidence was to the Executor. And the Court faid, here the Executor might declare of a Promife to himself: But adjornatur. And in Hillary-Term, upon Conference with all the Judges, it was held, the Evidence did not maintain the Declaration. 6 Mod. 309. Dean versus Crane. Note; The Cale of Heylin and Haftings is also ci-

ted, 5 Mod. 415.

54. An Assumpsit was brought against four, who pleaded Non assumpser. infra sex Annos, and Verdict was, that one of the Defendants did assume infra sex Annos, and the other non assumpser. And it was

moved, That no Judgment could be given against the Defendant against whom the Verdict was found; for this is an Indebitatus assumpsit for Goods sold, and it is an entire Contract, and they must all be found to promise, or else it is against the Plaintiss. Torts are in their Nature several, so one Defendant may be found Guilty, and the other Not guilty; but it is not so in Actions grounded upon Contract. Pollexsen Ch. J. Powell and Rokeby were of Opinion in this Case, That

the Plaintiff could not have Judgment. Ventris inclined to the Contrary; he admitted if an Indebitatus assumpsit be brought against four, and they plead Non assumpsi. and found that one of them

plead Ivon allumpy, and found that one of them

affurned, this is against the Plaintiff, for he fails in his Action. But in the Case at Bar it may be taken, that they did all promise at first, and that one of them only renewed the Promife within fix Years: The Plea of Non assumpsit infra fer Annos? implies a Promise at first; and if one should renew his Promise within six Years, it is reason it should bind him, and the Plaintiff must sue them alla or else he will vary from the Original Contract: But the Chief Justice seemed to be of an Opinion. That if the Promise were renewed within fix Years, yet if not upon a new Confiderations it should not bind; and if there were a new Confideration, the Action will lie against him that promised alone. Sed Quare; for the common Practice is upon a Plea of the Statute of Limia tations, to prove only a Renewing the Promife without any further Consideration; but a bare owning the Debt is not taken to be fufficient: Quere, If the first Consideration, upon repeating the Promise within six Years, be not enough to raife a new Cause of Action? Judgment was given for the Defendant. 2 Vent. 151. Bland verfus Hasterig & al.

55. An Action on the Cafe was brought against Executors, they were at Issue, upon Nothing in their Hands: It was given in Evidence on the Plaintiff's Part, That a Stranger was bound to the Testator in 1001. for Performance of Covehants, which were broken; for which the Executors brought Debt upon the Obligation, depending which Suit, both Parties Submitted themfelves to the Arbitrament of A. and B. who awarded, That the Obligor should pay to the Executors 70 1. in full Satisfaction, &c. and that the Executors should release, &c. which was done accordingly; and it was agreed by the Court, That by the Release it shall be taken in Judgment of Law, that the Executors have Assets to the Value of the whole 100 l. And although the Executors were compelled by the Award to make the Release; yet it was their own Act to submit themselves to the Arbitrament. 3 Leon. 53. Anonymus, S. C. Dal. 89.

vel Catalla Testatoris, vel habuit die impretrationis brevis præd' vel unquam postea, be lest out, the Plea referring only to the Time it is pleaded, Payment of Debts without Suit, after the Commencing of the Action, and before the Plea pleaded, if Issue be taken upon it, may be given in Evidence. 3 Le-

vinz 29. Hewet versus Farmingham.

57. In an Action upon a Promise, the Desendant pleaded a Submission of all Matters in Disference to Arbitrament, and an Award, &c. the Plaintist denied the Submission modo & forma, and Issue being joined thereon, the Evidence was of a Submission of all Matters touching Accounts, and allowed good Evidence; and because the Plaintist could not prove, that there were other Matters in Disserence, but Matters of Account, he was nonsuited; Hale and Maynard being of his Counsel. Aleyn 90. Johnson versus Rawlex.

Judgment, given in the Palace-Court on an Assumpst, where, to prove the Consideration, the Plaintiss
was to prove an Arrest, and because he did not
produce a Writ the Defendant demurred to the
Evidence, and upon that Judgment was given below for the Plaintiss; upon which a Writ of Error
was brought, and for the Plaintiss in Error it was
argued, That the Writs of the King's Bench are
Matters of Record, and so cannot be proved by

any Thing but themselves: And it was agreed by the Court, That the Writ ought to be produced at the Trial; but because the Arrest was confessed by the Demurrer, the Judgment was affirmed. I Levinz, Fitzharris versus Bojun 87. S. C. Sid. 105. S. C. 1 Keb. 450. But none of these Points are said to be adjudged in either of these Books; ideo Quære.

CHAP. VIII.

Of Evidence in Actions on the Case for Words, malicious Indictments, &c.

ON a Declaration for Words spoken in the Presence of A. B. and others in Evidence, it is sufficient to prove, That they were spoken in the Presence of others only. Winkfield and Coot, Lent Assizes, Norfolk 1662. per Hale Ch. Baron, T. per pais 180.

2. On a Declaration, Quare defendens Criment felonia ei imposuit, &c. the Plaintiff cannot give in Evidence Words only, but Acts, as Arrestings. Charging or Convening him before a Justice of Peace for Felony. Sanders versus Edwards, Mich. 14 Car. 2. B. R. T. per pais 180. S. C. 1 Keb. 389.

Show. 282. Hayens versus Rogers.

3. In an Action upon the Case, for maliciously prosecuting of an Indictment of Perjury against him, of which he was acquitted; upon Not guilty pleaded, it appeared upon the Evidence. That the Desendant was a Justice of Peace, and procured some as Witnesses to appear against him, and his own Name was endorsed upon the Indict.

this did not make him a Prosecutor; for if a Justice of Peace knows any Person that can give Evidence against one that is indicted, he ought to cause him to do it. But it was proved on the Desendant's Side, That this Indictment was drawn up by an Order of the Sessions; wherefore Kelynge Ch. J. said, That the Plaintist deserved to be bound to his Good Behaviour for bringing this Action. 1 Vent. 47. Girlington versus Pitz

field, S. C. 2 Keb. 572.

4. In an Action on the Case for maliciously indicting and profecuting the Wife for Felony, whereof she was acquitted: Nota, per Holt Ch. J. To do the Business fully, the Plaintiff ought to have proved a Copy of the Bill exhibited, and that it was found upon the Oath or Procurement of the Defendant; but their Names upon the Back of the Bill is sufficient Evidence of their being fworn to the Bill, though the Writing upon the Back be no Part of the Record: But it may be proved, That the Defendant was a Witness without having the Bill; but it were, I fay, more clear to have the Bill: And the first Part of the Defendant's Defence in this Case must be to prove a Felony committed; for without that, it is impossible he could have a probable Cause of Prosecution; and here, because no Body was by at the Time of the supposed Felony committed, but the Defendant's Wife, who could not in this Cafe be a Witness to prove the Felony committed, Holt Ch. J. allowed her Oath, which she made at the Trial of the Indictment, to be given in Evidence to prove a Felony committed; for otherwise, one that should be robbed, &c. would be under an intolerable Mischief; for if he profecuted for fuch Robbery, &c. and the Party should.

should at any Rate be acquitted, the Prosecutor would be liable to an Action for a malicious Prosecution, without a Possibility of making a good Desence, though the Cause of Prosecution were ever so pregnant. To which Darnel for the Plaintiff said, if Oath had been made freshly after the Fact committed, that Oath might be admitted as Evidence of it; secus not; but here it appeared a Warrant was taken out immediately, but nothing done thereupon until the Desendant had subsequent Fallings out with the Plaintiff. 6 Mod. 216,

Fobnson versus Browning & Ux.

5. An Action on the Case was brought for maliciously indicting the Plaintiff of Barratry without probable Cause, setting forth, that he was debito modo inde exonerat. and at the Trial to prove the Declaration, he produced a Nolle ulterius profegui by the Attorney General: And the Ch. I. doubting whether this Evidence maintained the Declaration, and strongly inclining that it did not, referved it for the Opinion of the Court; and he faid, That the entring a Non pros' was only putting the Defendant fine die, and fo far from discharging him from the Offence, That it did not discharge any further Prosecution upon that very Indictment, but that notwithftanding new Process might be made out upon it; and fure it is hard to allow a Man, that gets off by a Non pros', to maintain an Action for a malicious Profecution. Indeed, if he had pleaded Not guilty, and the Attorney General had confessed it, that would have done; but he that gets off upon a Non pros', does not at all get off on the Merits of the Cause; and to maintain a Conspiracy, it is necessary to lay and prove an Acquittal: So in an Action for fuing for a great Sum in order to, hold to extravagant Bail, the Plaintiff must show what

what became of that Cause, in order to maintain his Action; and so is my Lord Hob. But this here is not so much as a Nonsuit; for the Indictment stands still in Force, and the Attorney General may make a new Process upon it when he pleases: But he remembered a Case about twenty Years ago, in which Justice Wyndbam directed for the Plaintiff on the same Point, and faid, he thought it hard even at that Time. Harcourt Master of the Office, There never has been any Proceedings after a Nolle profequi, per omnes: In Case of Barratry, the Defendant upon a Motion may have a Rule to have Articles delivered to him, of the Instances, and the Prosecutor shall not give Evidence of any Particular, but what he has given Articles of; and if the Profecutor gives no Articles, he shall give no Evidence. And at another Day, Holt Ch. J. declared, That in all King Charles the First's Time, there was no Precedents of a Nolle Pros' on an Indictment: And Gould quoted a Case in Hardress, where it was entered on Record on an Information, and held to be a Discharge of it. And the Court seemed all clear, that the Action did not lie, but gave no Rule. 6 Mod. 261. Goddard versus Smith.

6. In an Action upon the Case on Trover, 'twas found by a Special Verdict, That one Pepper was possessed of those Goods, and the Desendant found them, and Pepper made the Plaintiss his Executor, and that the Desendant knowing them to appertain to the Plaintiss, denied to deliver them unto him upon his Request. And whether that were a Conversion without any other Act done, was the Question. And all the Justices, Popham absent, held, That it was a Conversion by the sole Denial. But being afterwards moved again, Popham held it to be no Conversion: Bu it was

cited at the Bar, That 23 Eliz. in this Court, it was ruled to the contrary: Et adjornatur. 1 Cro. 495. Eason versus Newman, S. C. Golds. 152. S. C. Moo. 460. and there it is said to be adjudged a Conversion in Popham's Absence, and cited to be so adjudged Moor 841. Isaac versus Clark. Brown 17. Anonymus. Adjudged a Conversion. Owen

151. Drury versus Woller, dubitat'.

7. Harris said, That it was the common Experience, that the Detainer of Goods from an Owner after Request, is allowed for a sufficient Evidence to maintain a Conversion: Whereunto I answered, that though legally it were not a Conversion; yet in that Case, it was reasonable to allow it for an Evidence to prove a Converfion; because if you have Goods of mine lawfully by Finding or Bailment; yet when I require them of you, you can no longer lawfully hold them; and therefore when you still detain them from me, it argues, that you claim them as your own, and fo use them. Hob. 187. Agar versus Liste, S. C. not S. P. 1 Brow. 5. S. C. Hut. 10. But that Book fays, Request and Refusal to deliver is good Evidence to prove a Conversion; but if it be found Specially, it shall not be adjudged a Conversion.

8. In an Action of Trover, &c. to prove the Conversion it was offered, That the Plaintiff did demand Satisfaction for the Corn; and it was ruled good Evidence, the Demand being to the Party himself who took this Corn, though the Corn it self was not demanded, but Satisfaction. Quod nota. Clayt. 122. Rookeby's Case.

9. In an Action of Trover and Conversion, nothing was proved but a tortious Taking of the Cattle by Way of Trespass, and driving them away; and it was ruled a good Ground for this N 4.

present Action, and a Conversion shall be intended; otherwise when he comes to them by Trover; there an actual Conversion shall be proved.

Cl. 112. Beckwith versus Elsey. 2 Sid. 264. Bruen versus Roe, agrees as to the first Point, but says, that where the Desendant comes by the Goods by Trover, that an actual Demand must be proved.

10. An Action of Trover and Conversion was brought for Oats, &c. and the Case upon Proof was, That certain Trespassers had taken these Oats from the Plaintiff, and brought them to the Mill to make into Oatmeal, and the Plaintiff came to the Miller before any Thing done, and demanded the Oats as his, and forbad him to proceed to make them into Oatmeal; but the Miller did proceed for all that, and made it into Oatmeal; and the Judge directed this to be a Conversion in the Miller, and directed the Jury accordingly, although it was urged by the Counfel of the Defendant, that a Miller was a publick Officer, and did but his Duty in this Case. And in this Case it was holden further, That if A. takes Goods from me, and these afterwards come to the Hands of B. by buying or otherwise, and he converteth them to his Use, B. shall not be charged to me without a new Demand made of them unto him, and a Detention afterwards. Clayton 37. Hold (worth's Cafe.

Werdict was found, That one Belgrave was posfessed of those sive Kine, and put them to Pasturage with the Desendant, and agreed to pay unto him twelve Pence for every Cow weekly, as long as they remained with him at Pasture, and that afterwards Belgrave sold them to the Plaintiss, and he required them of the Desen-

dant, who refused to deliver them to the Plaintiff, unless he would pay for the Pasturage of them, for the Time that they had been with him, which amounted to ten Pounds: Afterwards one Foster paying him the faid 101. by the Appointment of Belgrave, he delivered the five Beafts unto him; and if super totam materiam he be guilty, they find for the Plaintiff, and Damages 25% and if, &c. then for the Defendant. and my felf (absentibus cæteris Justiciariis) conceived, That this Denial upon Demand, and Delivery of them to Foster, was a Conversion, and that he may not detain the Cattle against him who bought them, until the rol. be paid, but is enforced to have his Action against him who put them to Pasturage: And it is not like to the Cases of an Inn-keeper or Taylor: They may retain the Horse or Garment delivered them until they be fatisfied; but not, when one receives Horfes or Kine or other Cattle to Pafturage, paying for them a weekly Sum, unless there be fuch an Agreement betwixt them; whereupon Rule was given, that Judgment should be entered for the Plaintiff. 3 Cro. 171. Chapman versus Allen.

Upon Evidence, the Case was this: A Carpenter sent his Servant to work for Hire to the Queen's Yard; and having been there some Time, when he would go no more, the Surveyor of the Work would not let him have his Tools, pretending a Usage to detain Tools, to enforce Workmen to continue till the Queen's Work was done; and a Demand and Resusal being proved at one Time, and a Tender and Resusal after. Holt Ch. J. The very Denial of Goods to him that has a Right to demand them, is an actual Conversion and

and not only Evidence of it, as has been holden: for what is a Conversion, but an Assuming upon one's felf the Property and Right of disposing another's Goods? And he that takes upon himself to detain another Man's Goods from him without Caufe, takes upon himself the Right of difpoling of them; fo the Taking and Carrying away another Man's Goods is a Conversion: So if one comes into my Close, and takes my Horse and rides him, there it is a Conversion; and here if the Plaintiff had received them upon the Tender. notwithstanding the Action would have laid upon the former Conversion, and the having of the Goods after, would go only in Mitigation of Damages; and he made no Account of the pretended Usage, but compared it to the Doctrine among the Army, That if a Man came into the Service and brought his own Horfe, that the Property thereof was immediately altered and vefted in the Queen, which he had already condemned; And here one of the Particulars in the Declaration being ill laid, the Defendant was found Not guilty as to that, and Guilty as to the rest, 6 Mod. 212. Baldwin versus Cole.

13. In an Action of Trover and Conversion. At the Trial Mr. Attorney General excepted against the Evidence, That if it were true, it destroyed the Plaintiff's Action, inasmuch as it amounted to prove the Desendant Guilty of Felony; and that the Law will not suffer a Man to smooth a Felony, and bring Trespass for that which is a kind of Robbery. Indeed, said he, if they had been acquitted or found guilty of the Felony, the Action would lie; and therefore it may be maintained against Mrs. Cory, who was, as likewise was William Maynard, acquitted upon an Indicament of Felony for this Matter, but not against

the Rest. But my Lord Chief Baron declared. and it was agreed, That it should not lie in the Mouth of the Party, to fay, That himfelf was a Thief, and therefore not guilty of the Trefpass. But perhaps if it had appeared upon the Declaration, the Defendant ought to have been discharged of the Trespass. Quære, What the Law would be, if it appeared upon the Pleading, or were found by Special Verdict. My Lord Chief Baron did also declare, and it was agreed. That whereas William Maynard, one of the Witnesses for the Plaintiff, was guilty, as appeared by his own Evidence, together with the Defendant's, but was left out of the Declaration, that he might be a Witness for the Plaintiff, that he was a good and legal Witness; but his Credit was lessened by it, for that he swore in his own Discharge, for that when these Defendants should be convicted, and have satisfied the Condemnation, he might plead the same in Bar of an Action brought against himself; but those in the Simul cum were no Witnesses. Several Witnesses were received and allowed to prove that William Maynard did at feveral Times discourse and declare the same Things, and to the like Purpose, that he testified now. And my Lord Chief Baron faid, Though a Hear-fay was not to be allowed as a direct Evidence, yet it might be made use of to this Purpose, viz. to prove that William Maynard was constant to himself; whereby his Testimony was corroborated. One Thorn, formerly Mr. Reynel's Servant, being subpæna'd by the Plaintiff to give Evidence at this Trial, did not appear. But it being fworn by the Exeter Waggoner, That Thorn came fo far on his Journey hitherward as Blandford, and there fell fo fick that he was not able to travel any farther,

ther, his Depositions in Chancery in a Suit there, between these Parties about this Matter, were admitted to be read. I Mod. 282. Lucy Luttrel versus G. Reynel Esq; G. Turberville Esq; J. Cory

and Anne Cory.

14. In Trover and a Conversion; upon Not guilty, the Evidence was, That the Goods were taken and sold by Virtue of a Commission of Sewers; and it was ruled, That this Matter might be well given in Evidence upon Not guilty pleaded, as detaining of Beasts in a Market for

Toll. Aleyn 92. Combs versus Cheney.

15. In an Action on the Case for a Trover and Conversion brought by J. S. a Citizen of Colchefter against the Farmers of Toll of the City of London for taking of Goods, the Defendant pleaded Not guilty. Upon a Trial at Bar Jones and Croke being only in Court, the Defendant confessed the Taking of the Goods for Non-payment of Toll, which the Citizens of London claimed by Custom, and the Citizens of Colchefer claimed to be exempt by Charter of King Richard; and the Citizens of London proved by feveral Records and Entries in their Books that the Citizens of Cotchester paid Toll; and on the Evidence, the Counsel for the Plaintiff objected. That this was no good Evidence on Not guilty, but ought to have been pleaded Specially, to which Opinion Croke inclined; fed Jones econtra. For it is not like a general Action of Trespass, in that he must plead Specially the Custom for Toll; but in an Action on the Case for Trover and Conversion, every Thing which proves the Conversion lawful, may be given in Evidence on the General Issue; but the Jury were permitted to bring in a Special Verdict if they pleased; nevertheless they found a General Verdict for the

Defendant, and Judgment was given accordingly. W. Jones 340. City of Colchester versus the City of London. Note; It appears by I Rol. Rep. 44. in the Case of Hill and Hawks, that the Custom to take Toll may be pleaded specially.

16. To an Action upon the Case on Trover for Three hundred Sheep the first of December. 36 Eliz. The Defendant pleaded, That he was Sheriff of the County of Lincoln, and that 7. S. recovered against the Plaintiff One hundred Pounds; and thereupon a Fieri facias issued to levy that Debt; which Writ was returnable Crastino Animarum 35 Eliz. That this was delivered to him, being then Sheriff of the faid County, upon the first of October, 35 Eliz. to be executed; that he by Force thereof, upon the 20th of October, 35 Eliz. took the faid Three hundred Sheep. and fold them upon the 22d Day of October, 35 Eliz. a Hundred and four Sheep for forty Pounds, Parcel of the faid One hundred Pounds; and that the other Hundred ninety-two Sheep remained in his Hands pro defectu Emptorum; and at the faid Day of Crastin. Animarum, he returned the faid Writ accordingly, and all this Matter. The which is the same Conversion, absq; boc, that he converted them aliter vel alio modo. And it was thereupon demurred: And after Argument, the whole Court held the Plea to be insufficient. First and Principally, because he doth not by his Plea confess any Conversion, and then the Traverse is ill; but he ought upon this Matter to have pleaded Not guilty, and have given it in Evidence. 1 Cro. 433. Ascue versus Sanderson.

17. In an Action on Trover of Goods, the Defendant pleaded Sale in the Market overt, whereby he justifies the Conversion; and it was held to be no Plea, because it amounts but to the

General

General Issue; and ruled accordingly, That if he did not plead, a Nibil dicit should be entered.

2 Cro. 165. Fobnes versus Williams.

18. In an Action of Trover for divers Loads of Corn, the Defendant by Plea entitles himself unto them as Tithes severed; and because the Plea amounts but to a Not guilty, the Defendant demurred, and shewed for Cause, that the Plea was therefore not good. Henden, Serjeant, would have maintained this Plea, because it concerns Matter in the Realty, viz. Tithes; and Title is pleaded, as it were a Confession of the Possession in the Plaintiff, and as a General Bar in Action of Trespass, and Colour given; fed non allocatur; for this Action comprehends Title in it; and a Plea which amounts but to a General Issue is not allowable, it being specially shewn for Cause of Demurrer; whereupon without Argument it was adjudged for the Plaintiff. 3 Cro. 157. Lynnet verfus Wood.

19. In an Action of Trover and Conversion for a Horse, the Desendant pleaded he was a common Inn-keeper, and that he took the Horse at Livery, and that he died in his Custody; and the Plea was adjudged ill, because it ought to be given in Evidence on the General Issue. I Rol. Rep. 22. Whitaker versus Collet.

20. If the Goods were not the Plaintiff's, the Defendant shall not plead it; but shall plead Not guilty, and give it in Evidence. 1 Bro. Action

on the Case, Pl. 109.

Conversion of Goods, the Defendant pleaded the Plaintiff pledged them to him for ten Pounds; Whether it ought to be pleaded or given in Evidence? Dubit. I Bro. Action on the Case, Pl. 113.

fendant pleaded that the Testator died intestate, and that Administration was committed to A. who fold the Goods to the Desendant. To which the Plaintiff demurred, as amounting but to the General Issue; and so was the Opinion of the Court. I Keb. 318. Tarling versus Dealton.

23. In Trover for Jewels, it was faid by Twifden, there is no Plea in Trover, but a Release of Not guilty; every special Plea in Justification being but Tantamount. 1 Keb. 305. Devoe versus

Dr. Coridon.

24. In Trover and Conversion Issue was joined, that the Horse in Question was bought at Dale in the County of Tork, in open Market there; but the Evidence was, that it was bought at S. in Lancashire; and it was holden that this did not prove the Issue, and that as this is pleaded the Place is material; whereas upon a General Issue it had not been so. Nota Cl. 131. Anonymus.

25. If an Administrator bring Trover upon the Possession of the Intestate, and Not guilty is pleaded, then the Desendant cannot give in Evidence a Will made, and Executors appointed; but that ought to have been pleaded in Abatement; but if Trover had been on the Possession of the Administrator, there, upon Not guilty, he might take Advantage of that Matter in Evidence; and if an Executor bring Trover upon the Possession of his Testator, upon Not guilty, he shall not be put to prove himself Executor; seems, if he had brought it on his own Possession. Far. Rep. 141.

26. In an Action upon the Case, the Plaintiff declared, that he brought into the Inn some Pieces of Stuff, and lodged there, of which Stuffs,

by the Default of the Defendant and his Servants; he was robbed in the faid House; the Defendant pleaded the Goods were not loft by any Default in him or any of his Servants; and on this, Iffue was joined; and the Defendant gave in Evidence that the Plaintiff came to his House and lodged there, and the Defendant faid to him that his Inn. was full of Guests, and he had not Room for him; and therefore would not receive him; notwithstanding which, the Plaintiff would not depart, but put his Goods into the Inn, and went to Bed there by the Sufferance of another Person without the Assent of the Innkeeper or his Servants; and this was held good Evidence; and the Jury found for the Defendant. 1 And. 29. Bird versus Bird, S. C. Ben. 60. S. C. Dy. 158:

Pl. 32.

27. In an Action on the Case against a Country Carrier, for not delivering a Box with Goods and Money in it: The Evidence was, That the Plaintiff delivered the Box to the Carrier's Porter, whom he appointed to receive Goods for him, and told the Porter there was a Book and Tobacco in the Box, and in truth there was a hundred Pounds in it besides. And it was agreed by the Counfel, and given in Charge to the Jury, That if a Box with Money in it be delivered to a Carrier, he is bound to answer for it if he be robbed, although it was not told him what was in it. And fo it was ruled in one Barecroft's Case, as Roll faid, Where a Box of Jewels was deliver'd to a Ferryman, who knowing not what was in it, threw them overboard into the Sea, and refolved he should answer for it. Roll directed, that although the Plaintiff did tell him of some Things in the Box only, and not of the Money, yet he must answer for it; for he need not tell the Car-

fier

rier all the Particulars in the Box. But it must come on the Carrier's Part to make Special Acceptance. But in respect of the intended Cheat to the Carrier, he told the Jury they might confider him in Damages; notwithstanding the Jury gave ninety-feven Pounds against the Carrier, for the Money only (the other Things being of no confiderable Value) abating three Pounds only for Carriage; Quod durum videbatur Circumftantibus. Al. 23. Kenrig versus Eggleston.

28. Nota, That if a Committitur be entered into the Marshal's Book, in an Action of Escape against him, it must be proved he was in his Custody since the Time; contra per Cur, Where it is entered upon Record; but by the Clerk and Wylde the King's Serjeant, the Course hath always been of late, that in case it be entered on Record, yet it must be proved that he was in Custody fince that Time, because it's the usual Course to enter Committitur against every Defendant, tho' he be upon Bail. I Keb. 375. Pettywere versus Hamson.

29. In an Action on the Case against a Sheriff, upon an Escape suffered by his Bailiff upon a mean Process; it was proved in Evidence. as necessary to make this Case, That there was fuch a Debt, that fuch a Process and Warrant was, and a due Debt. And lastly, That the Party arrested was become infolvent, otherwise he should not have recovered Damages to the Value of his Debt, as here he did, upon all this, proved in Evidence as aforesaid. Clay. 84. Tempest ver-

fus Linley.

30. In an Act 8 & 9 W. & M. c. 26. for the more effectual Relief of Creditors in Cases of Escape. and for preventing Abuses in Prisons and pretended privileged Places, there are these two Clauses, And be it further enacted by the Authority aforefaid, That if the faid Marshal or Warden for the Time being, or their respective Deputy or Deputies, or other Keeper or Keepers of any other Prison or Prisons, shall after one Day's Notice in Writing, given for that Purpose, refuse to shew any Prisoner committed in Execution to the Creditor, at whose Suit such Prisoner was committed or charged, or to his At-

torney, every fuch Refusal shall be adjudged to

be an Escape in Law.

And be it further enacted by the Authority f aforesaid, That if any Person or Persons whatfoever, defiring to charge any Person with any Action or Execution, shall defire to be informed by the faid Marshal or Warden, or their refpective Deputy or Deputies, or by any other Keeper or Keepers of any other Prison or Prifons, whether such Person be a Prisoner in his Custody or not, the said Marshal or Warden. or fuch other Keeper or Keepers of any other e Prison or Prisons, shall give a true Note in Writing thereof to the Perion so requesting the fame, or to his lawful Attorney upon Demand at his Office for that Purpose, or in Default thereof shall forfeit the Sum of 50 1. and if such Marshal or Warden, or their respective Deputy or Deputies exercifing the faid Office, or other Keeper or Keepers of any other Prison or Prisons, shall give a Note in Writing, that such Person is an actual Prisoner in his or their Cuftody, every fuch Note shall be accepted and taken as a sufficient Evidence, that such Person was at that Time a Prisoner in actual Custody. 6 8 8 9 W. 8 M. c. 26. Sed. 8 8 9.

31. On a Special Commission issued out of Chancery, an Inquisition found, That Weedon Ford had committed

committed (fuffered) five voluntary Escapes : Ford traversed the Inquest; and on the Trial, one who was fuffered to Escape, but was returned again. was produced to be a Witness. And 'twas Objected. I. That this was to fave his own Bond which he had given to be a true Prisoner; and would intitle him to an Action of False Imprisonment against the Marshal; and compared it to the Case of a usurious Bond. But per Cur, The Bond given by the Prisoner is a collateral Matter to the Escape, and the Confequence of his Evidence, as to that Bond, is not material to difable his being a Witness; and 'tis not like the Case of Ufury, for that renders the Bond void; and this is a Matter privately transacted between the Party and the Officer, of which (probably) there can be no other Evidence. 2. That this Witness had been convicted of Barratry, and the Record produced, but the Judgment thereon was to be fined five hundred Marks, and not to fland in the Pillory. On the other Side 'twas argued, That a bare Conviction of Perjury would take away one's Evidence, because 'tis an infamous Crime; but not fo of Barratry, which was not of an infamous Nature without an infamous Punishment; as the Pillory, &c. Curia contra: He is disabled by the Conviction: For 'tis not the Nature of the Punishment, but the Nature of the Crime and the Conviction that creates the Infamy. 'Twas then infifted. That he was Pardoned by the late General Pardon. And per Holt Ch. I. If one be Convict of Perjury on the Statute, he cannot be restored to his Credit by the King's Pardon: For by the Statute. 'tis Part of the Judgment that he be infamous and lose the Credit of Testimony; but he may be restored by a Statute Pardon. But in other Cases (as on Indictments at Common Law) where the Infamy is

only the Consequence of the Judgment, the King's Pardon may restore the Party to his Testimony. So held on a Trial at Bar. The King versus Ford,

2 Salk. 690, Vide Chap. 3. Nº 14.

32. The Plaintiff declared that he was seised of a Messuage, to which there belonged an ancient Water-course, and that the Defendant diverted great Part of the Water from its antient Course so that the Water did not flow in so plentiful a Manner as before; upon Not guilty pleaded, the Plaintiff gave in Evidence, that the Defendant had caused a Pipe of Lead to be laid into the great Pipe, thro' which the Water passed, which leaden Pipe conveyed the Water into his own House, where he used it as Occasion required; and this was holden good Evidence. Ben. 215. Moor versus Brown, S. C. Dy. 319.

33. In an Action on the Case for falsely and fraudulently felling a Horse to the Plaintiff, as the proper Horse of the Defendant, ubi revera it was the Horse of Sir 7. L. because the Plaintiff could not prove that the Defendant knew it not to be his own Horse (for the Declaration must be that he did it fraudulently, or knowing it to be not his own Horse) for the Defendant bought the Horse in Smithfield, but not legally tolled; the Plaintiff was nonfuit. Aleyn 91. Sir Richard

Sprigwell versus 70. Allen.

34. In an Action for executing an illegal Warrant, &c. It is good Evidence to prove the Justice of Peace acted as such, without shewing his Commission; so on the Statute of Hue and Cry. Constable's Cafe, Norf. Lent Assizes. Per Hale

Ch. Baron, T. per pais 181.

VIGO

35. In an Action upon the Cafe, for diffurbing the Plaintiffs and their Children and Family in the Possession of a Pew in the Church of Beckenbam.

bam, the Declaration fet forth, that they, their Ancestors, and all those whose Estates they had, had always enjoyed that Pew to fit in the faid Church, appertaining to the Manor, to which the Advowson is appendant, that they are Lords of the Manor and Founders of the Church; the Defendant prescribes to the Pew as appertaining to his House, absq; boc; that the Plaintiffs, their Ancestors, or those whose Estates they have, had the Seat Modo & forma as is fet forth in the Declaration; and on this, Isue was joined and the Evidence proved them to be Tenants in Common, which was held not to maintain the Iffue by the Ch. J. Haughton and Chamberlain; fo the Plaintiff was nonfuit, Dodderidge diffentiente. Palm. 161. Snelegar versus Brograve S. C. A. Bend. 89.

36. If one entitles himself to a Seat in a Church by Prescription, whether it be in a Declaration or Plea in Bar, tho' he do not alledge that he is bound to repair the Seat, yet shall he prove he does do it on the Trial. Per Hale. 2 Sid.

203. Stephen's Cafe.

37. The Plaintiff brought an Action on the Case, for a salse Return to a Mandamus to swear him Common-Council-man for the Borough of Totne's; which by Charter from Queen Elizabeth, the Manner of their Election was chalked out for them, and a Usage was given in Evidence to a Jury at the Bar, that the Election had gone quite contrary; which Usage was allowed to be good Evidence of a By-law whereupon it was founded. Farresley's Rep. 37. Gay versus Cross.

38. In an Action on the Case for rescuing Goods, which the Plaintiff had distrained for Rent; the Plaintiff declared, that he was seised in Fee of a certain Messuage, &c. and being so seised, demised it to J. S. for a Year, and so on the Case for rescuing the plaintiff had distrained for Rent; the Plaintiff declared, that he was seised in Fee of a certain Messuage, &c. and being so seised, demised it to J. S. for a Year, and so from Case for rescuing

from Year to Year as long as both Parties should please, by a Parol Demise, referving Rent; and for Rent-arrear he distrained, and the Distress was refcued from him by the Defendant, for which the Action was brought; and here the Plaintiff having laid a Seisin in Fee in himself. was fain to prove it; and in proving the Leafe it appeared to be for a Year; and fo from Year to Year, as long as both Parties pleased; and that the Lessee should not go away without giving a Quarter's Warning: And it was infifted on by Eyre and Parker, That the Lease given in Evidence varied from the Lease declared on; so they failed in proving their Declaration. But per Holt Ch. J. it is well enough, for the Agreement concerning the Quarter's Warning is only a Collateral Agreement, not at all affecting the Land in Point of Interest, but collaterally binding the Person of the Lessee; and therefore it need not be mentioned in the Declaration. 6 Mod. 215. Dod verfus Monger.

on a second on the

And Parky and arts the completion of the American Commence of the Commence of

Co. Reserved and a served and a

and the company of the second configuration of the second

कार को को है है है। की वह

the Plane of the world as your

CHAP.

the Definiont and Plain.

CHAP. IX.

Of Evidence in Actions of Debt.

I. IN an Action of Debt, the Plaintiff declared L upon an Account stated; the Defendant pleaded Nil debet, and the Counsel of the Defendant offer'd in Evidence, that there never was any fuch Account, which they infifted they might; for if there never was any Account, the Plaintiff declaring upon an Account, then it is true, that he owes him nothing in the Manner fet forth in the Declaration: For the Plaintiff, it was faid, that if there never had been an Account, the Defendant should plead so; but that the Plea of Nil debet confesses the Account, and therefore, they ought not to give in Evidence any Thing contrary to their Plea; but by Newton Ch. Just, it may be given in Evidence, or pleaded. 20 H.6. 24.

2. Debt for 101. pro eo quod cum the Defendant had accounted with the Plaintiff of divers Sums as due, and upon that Account was found in arrear 81. per quod Actio accrevit to have the said 81. Cumq; etiam the said Defendant had borrow'd of the Plaintiff 101. to be paid on Request, Dequibus quidem separalibus denariorum summis this Defendant afterwards satisfied 81. yet the 101. hath not paid. Plea Nil debet. On the Trial they gave in Evidence only 81. which I urged could not be Evidence of the Mutuatus—for that was one entire Contract; and another Contract for 81. was not the same they had declared upon; and of that Opinion was the Lord Chief Justice Holt. Then to prove the Insimul compu-

taffet, they prov'd that the Defendant and Plaintiff's Wife reckon'd that the Defendant had borrowed at one Time 40 s. and at another Time 40 s. and at another Time 41. and this came to 81. and he promifed to pay it. I urged that this could not maintain an Infimul computaffet, for that it was only a Reckoning on one Side, for there was neither Payment nor Deduction on the other; and at that Rate, faying one and one was two, would make an Account. But Ch. Just. Holt over-ruled me, that it was good Evidence of an Account, and fo they had a Verdict quoad Comput' pro Quer' & quoad resid' pro Desend'. Then I moved in Arrest of Judgment, that no Judgment could be on this for the Plaintiff, because the Verdict was repugnant to, and different from, the Declaration; for the Declaration acknowledged Part of both the Sums to be received, and consequently Part of the 8 1. to be received, and the Jury had found the contrary, that there was nothing due on the Mutuatus, and that the whole 81. in the Insimul computasset was due; fo that they have found the Plaintiff's Declaration to be false. But per Dolben, the Exception was too nice. And by Ch. Just. Holt, the tol. if received of any of the two Sums, it was received out of the feveral Sums; and fo by the Court, the Plaintiff had his Judgment. Show. 215. Styart versus Rowland.

3. Note; It was the Opinion of all the Judges in the C. B. That if a Man fells two Horses for forty Shillings, and the Plaintiff in an Action of Debt declares on the Buying of one Horse for forty Shillings, the Desendant may plead Nil debet, and the Jury must find for him, under Pain of Attaint; for here the Words Modo & forma are material, the Contract not being the same that

that was between the Parties: The Law is the fame, if he had bought one Horfe for forty Shillings, and the Plaintiff declared on a Contract for Two; or if there was an Ox bought, and the Declaration was for a Horse; and so in every Case when the Plaintiff varies from the Contract. 21 Ed. 4. 21. Dyer 219. Bladwell versus will much to basis in midnen in wi

4. An Action of Debt was brought by a Merchant of London against the Earl of Derby and his Wife, and the Plaintiff declared upon a Contract for Silks, and it appear'd upon the Evidence, that the Countess, during the Coverture, had bought of the Plaintiff certain Silks for her own wearing; and for the Money, which the Countels agreed to pay for the same, the Action was brought. It was the Opinion of Dyer, Manwood and Mounson, that the Contract by the Wife, during the Coverture, should not bind the Hufband but admit that the Husband should be bound, yet this Action is not well brought a-gainst the Wife, for she ought not to be mention'd in the Writ. 4 Leon. 42. The Earl of Derby's Cafe. Dyer 234. b. Pl. 17. Executors of Wheeler versus Poins, &c.

5. Issue in Debt was Nil debet, and thirty-nine Shillings proved for Wares fold, but no Evidence for the ten Shillings lent, &c. which was put in to make the Sum forty Shillings, fo to bring it within the Cognizance of the Courts of Westminfter, which was held good in this Cafe: And note, fo it hath been held long; but fee Coke upon Magna Charta holds it a Deceit to the Statute, and fo a Crime; and also that such Matters may be shewed to arrest the Judgment as it seems.

Clayt. 132 Barftoe versus Anderson.

6. An Action of Debt was brought, and the Plaintiff declared, that he was retained by the Defendant as his Servant for twenty Shillings a Year and Cloaths; or if he had no Cloaths, he was to receive five Shillings a Year in Lieu thereof, and fet forth that his Wages had not been paid. him for fo many Years, nor the Cloaths for four: the Defendant pleaded, that he had paid the Cloaths according to the Contract; to which Plea. it was objected by Moyle, that it amounted to no more than a Nibil debet. Per Littleton, Choke and Needbam, Justices, the Plaintiff having pleaded the Delivery of another Thing, 'tis good, tho' had he pleaded Payment, it would have been otherwise; Et per eosdem, the Defendant might have pleaded he left his Service. Bro. Det. 112.

9 Ed. 4. 86.

7. In an Action of Debt brought by the Administrators of Young against Albburnham, the Defendant pleaded Nibil debet; and the Inquest was taken by Default. And upon the Evidence given for the Plaintiff, the Case appeared to be this, That the faid Toung was an Inn-holder in a great Town in the County of Suffex, where the Seffions used to be holden; and that the Defendant was a Gentleman of Quality in the Country there; and he, in going to the Seffions, used to lodge in the House of the said Toung, and there took his Lodging for himfelf, his Servants and Horses: Upon which the Debt in Demand grew; but the faid Toung was not at any Price in certain with the Defendant, nor was there ever any Agreement made betwixt them for the same. It was said by Anderson, Ch J. That upon that Matter, an Action of Debt did not lie. And therefore afterwards, the Jury gave a Verdict for the Defendant. 3 Leon. 160. Toung versus Albburnham.

8. In

8. In Debt on Award, the Plaintiff counted of a mutual Agreement, and Submission ad performand' an Award, which was made that the Defendant should pay 50% to the Plaintiff, Et Super Reception' inde, the Plaintiff should deliver up Writings, and give a general Release; and per Hyde & Cur', The mutual Submission is no Promise in it self, but only an Evidence of it.

1 Keb. 509. Tilford versus French.

9. Whether in an Action of Debt for Rent upon Nibil debet pleaded, the Defendant may give Entry and Expulsion in Evidence is much doubted in our Books. The old Books, viz 2 Leon. 10. Winkfield versus Seckford. Golds. 80. Sibile versus Hill. Ow. 55. Anonymus, all fay it may not: but the later Reports, viz. 1 Mod. 35. Anonymus. & 118. Brown versus - I Vent. 258. Anonymus. 2 Sid. 151. Drake versus Bear, S. C. 1 Lev. 104. 2 Keb. 762. Matthews versus Cross, all agree it may.

10. In Debt for Rent on a Lease; the Evidence to prove the Lease was, that the Plaintiff leas'd a House to the Defendant at a Rent, but no Time mention'd; and it was agreed at the fame Time, that the Lessee was not to leave it without Half a Year's Warning. Per Hale, Norfolk Summer Aff. 1668. It's a Lease at Will, and the leaving at Half a Year's Warning is but a collateral Agreement, and no Part of the Demise.

T. per Pais 190.

11. In Debt upon a Lease; the Defendant pleaded Payment, and in Evidence shew'd, he paid it to Sequestrators of the Commonwealth, the Plaintiff being a Delinquent; and it was ruled this was good Payment, to prove the Isue, which was a Payment to the Plaintiff himfelf. Clayton 129. Anonymus.

12. In Debt for Rent upon a Lease, and Nil debet pleaded, Ne unques seisie de Terre is good Evidence; but it is not upon the Plea of Riens arrere or leavy per Distress. 2 Rol. Abr. 677. Pl. 21.

13. A Receipt of the last Half Year's Rent is Evidence that all before was paid. T. per Pais

211.

14. In Debt for Rent referved upon a Leafe for Years: The Issue being joined, if the Rent were paid or not, the Defendant gave in Evidence for Part of the Rent, that the Plaintiff by Covenant was to repair the House, and did not, and that thereupon he expended Part of the Rent in repairing the House; and the Question was, If this Evidence will maintain the Issue? Gawdy conceived it did; for the Law giveth this Liberty to the Leffee to expend the Rent in Reparations, for he shall be otherwise at great Mischief; for the House may fall upon his Head before it be repaired, and therefore the Law alloweth him to repair it, and recoup the Rent. Vide 12 H. 8. 1. 11 Ri. 2. Barr. 242. 14 H. 4. 27. Fenner, It is no Evidence; for if the Lessor will not repair it, he is to have his Covenants against him. Clench feemed he might well expend the Rent in Reparations, but he ought to have pleaded it, and cannot give it in Evidence upon the General Issue; and they thereupon moved the Jury to find a Special Matter; and as to the Refidue of the Rent, he shewed that he paid it to others that had Rent-charges out of the Lands, which the Lessor had covenanted to pay, and that by the Commandment of the Leffor he had paid the Rent, in Discharge of the faid Rents; and this was clearly held good: For Payment to another, by the Plaintiff's Appointment is Payment to himfelf. I Cro. 222. Taylor versus Beal. 15. In

15. In Debt for Rent upon Non dimisit, that the Lessor riens avoit in the Land at the Time of the Demise, may be given in Evidence. Co. Lit. 47. Dy. 122. Pl. 23. Marlaine versus Hardy.

16. In an Action of Debt for Rent, the Defendant pleaded Non dimisit, and the Evidence proved a Demise only in Part; and it was held, that it did not maintain the Issue for the Plaintiff. Dyer 260. Pl. 22. Anonymus. I And. 13. Slyfield

& Ux. versus Sybil, S. C. Mo. 80.

17. If a Man leafe Lands by Indenture, dated the 30th of August, 23 H. 8. to hold from the Feast of St. Michael next following, for 21 Years; and after the same Lessor by Indenture reciting the aforesaid Lease, and that it bears Date the 6th of August, make a new Lease, this second Lease to begin at the Expiration of the first: If it be pleaded, that the Party by Indenture, bearing Date the 30th of August, &c. ut supra; and that after reciting that he had demifed it by Indenture the 30th of August, he did demise ut supra, and Issue is taken Quod non dimisit modo & forma: the last Indenture may be given in Evidence, notwithstanding the Variance as to the Date of the first Indenture, for that is not material; for the Demise is the Substance of the Issue. 2 Rol. Abr. 682. Pl. 6. Dy. 116.

18. Upon an Evidence at the Affizes, where Non est fast was pleaded to a Release which was made to A. and B. and now it was given in Evidence to prove this Deed, that A. formerly in an Action against him had pleaded this Release in Bar, and the Release was entred upon the Record in bac verba, and now that Record was shewed forth and read, being proved a true Copy. And this was admitted for Proof of this Release; for

no other Evidence was of the Sealing and Delive-

ry of it. Clayt. 62. Anonymus.

19. Debt was brought upon a fingle Bill, for Payment of 2001. on Demand; upon Non eft factum, one of the subscribing Witnesses was produced, and gave full Evidence of the Enfealing and Delivery of the Bond. On the other Side was produc'd a Person of the same Name and Surname with the other subscribing Witnesses; who acknowledged that the Hand was very like his, but it was not his; that he never knew either of the Parties, nor the other Witness, nor could the other Witness say he was the Man; and both their Reputations being made good in Proof, Holt, Ch. T. ordered them both to write their Names, and thereupon left it to the Jury, who found for the Plaintiff. And here Holt, Ch. J. ruled, that this being a fingle Bill, it needed no Specification, according to the late Statute, because it did not carry Interest, yet directed the Jury to give Damages, viz. Interest: And where it was objected it was payable on Demand, and no Damages or Interest incurred till Demand, and none was proved; Holt, Ch. J. faid, that could not have been taken Advantage of upon Non est factum, or any other collateral Issue; but should have been pleaded. 6 Mod. 167. Osbourn versus Hofer.

20. Per Finchden on a Declaration on a Bond supposed to be made by Two, if Non est factum is pleaded, and it is proved to be the Deed of one, and not the other, yet the Plaintiff shall recover against him whose Deed it is. 40 Ed. 3. 35.

21. Debt upon a Bond, and it did appear that the Defendant and another were bound jointly in this Obligation; and it was ruled, That though the other Obligor be dead, yet the Plaintiff hath failed in his Declaration; and if Non est fattum be pleaded, and his Bond produced, it shall be against the Plaintiss. See by me, if other Issue be, as Payment at the Day or the like; it seems then the other Matter is out of Doors, and will be well enough. Clayt. 119. Anonymus. Cok. Lit. 283.

pleaded; the Witnesses proved the Bond, that bears Date at another Place, to have been delivered at Tork; and it was held the Evidence did not maintain the Issue. 2 Rol. Abr. 677, 24.

23. In Debt upon an Obligation against Oliver St. John, and Alice his Wife, as Heir of her Father: The Defendant pleaded Non eft factum of the Father; and it was found by Special Verdict, that the Obligation was made by the Father of the Wife to the Plaintiff and another, whereas in truth the Plaintiff hath declared upon an Obligotion made to himself only, without speaking of any other Joint Obligee, and that the Plaintiff as Survivor hath brought the Action; and if upon the Matter it shall be faid the Deed of the Defendant in Manner as the Plaintiff hath declared, the Jury refer unto the Court. And the Court was clear of Opinion, that the Plaintiff ought to have declared upon the special Matter. 1 Leon. 322. Dennis versus St. John. Dubit. March 125. Gatford versus Bayly; and in Aleyn 41. Holdwich & Uk. versus Chase, and adjudged Contra, Savill 92. - versus Read, and Clay. 3. Elliot's Cafe.

24. Carus asked the Judges whether Razure may be given in Evidence on Non est factum pleaded; Dyer and the other Judges answer'd not; because he thereby acknowledges the Deed to have been once his Deed, and avoids it by a sub-sequent

fequent Matter, and therefore must plead specially. Mo. 66. Anonymus. Saun. 71. Manwood verfus Harris.

25. When a good Deed is rased, by which it becomes void, the Obligor may plead Non est factum, and give the Special Matter in Evidence; because at the Time of the Plea pleaded 'tis not his Deed. 5 Co. 27. Pigot's Case, S. C. n. S. P.

I Rol. Rep. 39.

26. Chamberlain brought Debt upon an Obligation against Stanton; and upon Non est factum, the Jury found this Special Matter, That the Defendant subscribed and sealed the faid Obligation, and cast it upon a Table, and the Plaintiff took it without any other Delivery, or any other Thing amounting to a Delivery. And the Court was clear of Opinion, that upon that Matter the Tury had found against the Plaintiff; and it is not like the Case that was here lately adjudged, that the Obligor subscribed and sealed the Obligation, and cast it upon a Table, saying these Words, This will serve; the same was held to be a good Delivery; for here is a Circumstance, the speaking of these Words, by which the Will of the Obligor appeareth that it shall be his Deed. 1 Leon. 140. Chamberlain and Stanton's Cafe, S. C. Ow. 95.

27. In an Action of Debt upon Bond, the Defendant pleaded Non est factum; and the Evidence to prove the Delivery was this, That the Obligee took it up after it was writ and sealed by his Directions, and delivered it to the Obligor, saying, This will serve; and this Evidence was held sufficient. Dy. 192. Pl. 26. Parker and Gib-

fon versus Tenant. Dalis. 104. Anonymus.

28. In an Action of Debt upon an Obligation, which was fet forth to be made the 15th of Nov.

25 Eliz.

the Jury found a Special Verdict, viz. That it was dated the 15th of Nov. 23 Eliz. but was not Sealed or Delivered until the 18th of Nov. 26 Eliz. Et si super totam materiam the Court shall adjudge it for the Plaintist, Et si, &c. And it being hereupon moved, all the Court, without any Dissiculty, resolved, That this Verdict is found for the Plaintist; for the Issue being generally Non est sattum, it appears to be his Deed. But peradventure by Special Pleading he might have helped himself: Wherefore it was adjudged for the Plaintist. 2 Cro. 136. Lady Lane versus Pledall.

29. To an Action of Debt upon Bonds, the Defendant pleaded Non est factum; and after Plea pleaded, and the Venire facias awarded, and before the Day of Trial, by the Negligence of one of the Clerks, in whose Custody one of the Bonds was, the Seals were torn off, and the Bond was eaten by Mice; and by the Opinion of the Judges of both Benches, the Jury was directed to enquire whether it was the Deed of the Defendant at the Time of the Plea pleaded. Dyer 59. Nicols versus Haywood.

go. In an Action of Debt upon Bond, the Defendant pleaded Non est factum, and gave in Evidence, that after the making the Deed, the Defendant paid the Money to the Plaintiff, who thereupon took the Defendant's Seal off the Bond; to which the Plaintiff demurred. Dyer 112. Pl. 50.

Peers versus Bishop.

Non est factum; the Jury found that the Defendant did seal and deliver it as his Deed, but that after the Day of the Issue joined, the Seal was pulled off from the Obligation; and the Plaintiff

had Judgment; for it was the Defendant's Deed at the Time when the Issue was joined, and the Trial shall relate to it, although the Deed was cancelled afterwards. 1 Cro. 120. Michael versus Stockwith, S. C. Ow. 8. S. C. Golds. 83.

a Bond is read to him different from what it really is, he may plead Non est factum; and give this Matter in Evidence. 15 Ed. 41, 18. 39 H. 6.

9, E3c.

33. Per Brook; If I deliver a Bond to a Stranger as an Escrow, to be delivered over as my Deed on the Performance of a Condition, and the Bond is delivered over before the Condition is perform'd; in an Action brought upon this Bond, I may give this Matter in Evidence. 14 H. 8. 28.

34. In Debt on an Obligation, the Defendant pleads it was delivered as an Escrow, and so Non est factum, & boc parat' est verificare; to which the Plaintiff demurred especially, because it tended to the General Issue; and per Cur', This is a Plea that may conclude either Way, and is most usual with this Conclusion; tho' generally where the Negative Plea doth waive all Precedents, he shall conclude to the Country as on Non assumpsiting sex Annos; also by Hale Ch. J. an Escrow may be given in Evidence on Non est factum, as well as Suspension on Nil debet; but Twisden and Wylde doubted. 3 Keb. 142. Manning v. Bucknal.

35. In Debt upon a Bond, the Defendant pleads, that the Bond was delivered as an Escrow to a third Person to be his Deed to the Plaintiff, upon his vacating a certain Judgment, which was not done, Et sic non est factum, & de boc ponit se super Patriam, without adding & Predict the Plaintiff similiter; the Plaintiff replies, that it was delivered as an Escrow to be delivered to him upon

his Payment of twenty Shillings towards vacating the Judgment, and Issue thereupon; that is, upon a Traverse of its being delivered as an Escrow, to become his Deed upon vacating the Judgment. And here Holt Ch. J. held, that there is no Difference between delivering his Deed as an Escrow. to become the Party's Deed upon his doing such a Thing, and to be delivered to the Party as his Deed upon his doing fuch a Thing; for in neither Case it is his Deed, 'till the second Delivery! And he faid, If a Man delivers a Writing as his Deed to a Stanger, to be delivered by him to a third Person, upon his doing such a Thing, that is a Deed ab initio in Trust for the third Person. upon a Contingency: But upon the Saying in 5 Co. Periman's Case, 84 b. He was content to have the Matter found specially; but the Plaintiff was nonfuited upon another Point. And Holt Ch. J. faid, in all his Time he never knew fuch a Plea as this; for all these special Non est factums, in Case of Escrow and Rasure, &c. are impertinent; for thereby the Defendant brings all the Proof upon himself; whereas if he had pleaded Non est factum generally, he would turn the Proof of whatfoever is necessary to make it his Deed upon the Plaintiff: And it was agreed by all, that the Deed cannot be an Escrow to the Party himself. 6 Mod. 217. Bushel versus Palmore.

36. On a general Non est factum, the Defendant may give any Thing in Evidence to prove the Deed never was his Deed. 2 Rol. Abr. 683. Pl. 8.

37. In Debt on Bond brought by an Administrator; if the Defendant pleads Non oft factum, the Plaintiff in Evidence need not shew the Letters of Administration; for this is admitted by the Defendant's Plea. T. per pais 225.

P 2

38. Debt

as. Debe

38. Debt upon an Obligation; the Condition was for the Payment of a leffer Sum at a certain Day and Place; the Defendant pleaded Payment at the Day and Place according to the Condition: upon which they were at Iffue, and it was found, that he paid it before the Day, and at another Place, and the Plaintiff accepted at ; and for whom this Verdict was found, was the Question. Anderson; it it no Question, but it is found for the Defendant; and afterwards in Mic. 31 & 32 Eliz. it was moved again, and then Anderson faid, they were all refolved to give Judgment against the Plaintiff; for Payment before the Day is Payment, at the Day; and thereupon it was adjudged, that the Plaintiff should be barr'd. I Cros 142. Bond versus Richardson, S. C. 1 And. 198. S. C. Moo. 267. S. C. Ow. 45. S. C. Sa. 96. S. C. I Leon. 311. mich mosbus And Wholeses one

39. In Debt upon a Bond of 40 % for the Payment of 201. at a Day and Place certain: The Defendant pleaded that he had paid the faid 20 %. according to the Condition, upon which they were at Issue; and at the Niss prius the Defendant gave in Evidence, that he had paid the Money to the Plaintiff before the Day, and that the Plaintiff had accepted of it; all which Matter the Jury found specially, and referred the same to the Justices: And it was faid by the whole Court, that that Payment before the Day was a sufficient Discharge of the Bond; but because the Defendant had not pleaded the fame specially, but generally, that he had paid the Money according to the Condition; the Opinion was, that they must find against the Defendant; for that the Special Matter would not prove the Iffue: And the Lord Dyer, Ch. J. faid, that the Plaintiff's Counfel to the to the Counfel

Counsel might have demurred upon the Evidence. Godb. 10. Anonymus. Godb. 100. Plimpton's Case.

Years standing, and no Demand proved thereon, or good Cause of so long Forbearance shewn upon a Solvit ad diem, I shall intend it paid; a fortiori, upon a Note, if it be any considerable Sum:

6 Mod. 22. Anonymus.

41. Queen Elizabeth by a Proclamation, bearing Date the 24th of May, in the 43d Year of her Reign, ordered that the mix'd Money which the had fent over to Ireland should be the current Coin of that Kingdom, and that after the roth of June following, all other Money should be esteemed only as Bullion; the April before this Proclamation, when the pure Coin was current, one Bret of Drogbeda, Merchant, having bought fome Goods of one Gilbert of London, became bound to the faid Gilbert in a Bond of 2001. conditioned for the Payment of One hundred Pounds Sterling, at the Tomb of Earl Strongbow in Christ's Church, Dublin, at a certain Day to come, which happened to be after the Establishment of the mix'd Money; and Brett tendered the 100 l. at the Time and Place appointed, and it was held a good Tender. Dav. 18. Case of mix'd Money Stock and the service of the control of the c

42. Upon Evidence ruled per Ch. J. Holt, that in Debt, Plene administravit admits the Debt, but otherwise in an Action on the Case, or in an Indebitatus Assumpsit; for there the Plaintiss must prove the Debt; and per Holt, In Proof of a Plene administravit, if the Action be Debt on a Bond, and you offer Payment of a Bond, on Plene administravit, Proof must be it was a Debt by Bond, and that it was sealed and delivered; but on

Debt to Simple Contract, you need only prove Payment; because, if no Bond, it is a good Administration in that Action. Shower 81. Saunder-

fon versus Nichols. Wallet and and la vincan

43. In Debt against Executors who plead Plene administraverunt, the Plaintiff replied Assets at the Day of the Original, scilicet, such a Day; and on this they were at Issue, and on Trial at Middle-sex before the Ch. J. the Plaintiff was nonsuited for not producing the Bill; on Assidavit of this, Motion was made for a new Trial, and Twisden and Wyndham being only then in Court, said that the Plaintiff needed not to produce the Bill at the Trial; and therefore if the Plaintiff was over-ruled in it, he ought to have tendered a Bill of the Exceptions, but shall not have a new Trial. 2 Sid. 226. Rogers versus Rogers, S. C. 1 Keb. 793.

Executors who pleaded Plene administraverunt, if the Plaintiff replied Assets die Exhibitionis Billæ, scilicet, the 23d of October, which is the first Day of the Term, if it appear on the Evidence that the Bill was not filed till afterwards in the Term, nothing that the Defendant has paid for Debts of an equal Nature after the Beginning of the Term, and before the filing of the Bill, shall be Assets, and that the Time of the filing of the Bill shall be saved to him in the Evidence. Sid. 432. Man ver-

fus Adams. Adams Edirionali Moor Ab sham

45. In an Action of Debt against Executors who pleaded Plene administraverunt, the Plaintiff replied Assets, and the Defendant gave in Evidence that the Testator had pawned a Gold Cup for 20 l. and that the Executors had redeemed it with their own Money, and so the Property of the Cup vested in the Executors; and it was doubted whether this Matter might be given in Evi-

Evidence, for it was faid to be contrariant to the Iffue; but at last it was resolved by the Opinion of all the Judges excepting Kinsmill, that the Property of the Cup was vested in the Executors, and that the Special Matter might be given in Evidence. 20 H. 7. p. 2. Pl. 5. p. 4. Pl. 12. & 14. S. C. Kel. 58. 1 And. 24. Shelley versus Sackville. Bend. 11. Clayton versus Spencer, S. C. Moo. 2. Co. Lit. 283.

46. Debt against the Defendant as Administrator; she pleaded Plene administravit. The Jury found that the Intestate was indebted to divers by Obligations, and that after his Death, the Defendant had taken in the Obligations, and had obliged her felf to pay the greater Part of the Sums contained in the Obligations, at certain Days to come, and for the Residue had promised to the Parties, that in Consideration of Delivery of the faid Obligations, that she would pay, &c. And by the Opinion of Anderson, Wyndham and Periam, it was held clearly a good Administration; fo that the Property of the Goods of the Intestate to that Value were altered and changed in the Defendant. I Cro. 120. Stampe versus move which the Day office M Hutchins.

47. In an Action of Debt brought against the Defendant as Administrator, he pleads divers Judgments, amounting to 670 l. and the Assignment of 100 l. Debt to the King by Deed enrolled; and he pleaded that he retained his Debt in his Hand; and he might have given this in Evidence, or pleaded it, at the Liberty of the Defendant. 1 Brown 75. Bond versus Green, 1 Brown 52. Anonym. 2 Rol. Abr. 684. Pl. 8, &c.

48. If an Action is pending against an Executor, and a Debt due by the Testator to the Executor, become due and payable, Quare, Where

ther the Executor upon Plene administravit pleaded may give this in Evidence without pleading

the Special Matter? 2 Rol. Abr. 684 10.1 poplat.

49. In Debt upon a Bond, and Plene adminifravit pleaded, it was held no good Evidence to
prove the Defendant had passed his Promise to
pay J. S. his Debt, due by the Testator before
this Action brought; but otherwise, if he had given his Bond for it: And if an Executor renew a
Bond, into which his Testator had entred as Surety only; this is no such Administration as will
make this Plea good against other Creditors by
Specialty; and this was the Case now, and it was
upon this Direction found for the Plaintiff. Clay.
88. Arburb versus Collison.

Executor De son tort, and Plene administravit pleaded, and the Plaintiff replies Assets, the Defendant cannot give in Evidence a Retainer, to satisfy a Debt due to hinself. 1 Cro. 630. Ireland

versus Coulter, S. C. 5 Co. 30. &c.

51. An Action of Debt was brought against an Executor, and Plene administravit pleaded, and Affets replied, at Nisi prius at Guild-Hall; to prove Affets the Day of the Writ purchased, it was given in Evidence, that the same Day a Sum of Money sufficient to answer the Debt was brought into the Prerogative Court at Canterbury, and there delivered to the Executors as Money due to the Testator's Estate, and it was not denied by the Executors; but they gave in Evidence, that immediately upon a Receipt of the Money in the Prerogative Court, and by the Directions of that Court, they paid the Money away to a Creditor of the Testator's; and yet this Sum was determined to be Affets in the Hands of the Executors, although the Writ was purchased the

do

the same Day, and after the Payment of the Money; yet perhaps the Defendants might have helped themselves by Special Pleading. Dy. 228.

Anonymus.

tors, and Plene administraverunt pleaded, an Inventory had been exhibited by one of them, and it was holden the other shall not be obliged by it; but the Plaintiff ought to prove that he hath actually administred, and that Goods came to his Hands, and so give him a Charge, because he was but Executor here of his own Wrong; and because the Plaintiff could not prove this, he was nonsuited. Clay. 106. Ireland's Case.

ya. In Debt upon a Bond against an Executor, who pleaded Plene administravit, and gave in Evidence Bonds cancelled and taken in, and Acquittances for Money; this Evidence was held not good without Proof of real Payments made, or new Security given. Clayton 112. Scot's Case.

54. Upon Plene administravit pleaded, the Executor cannot give in Evidence a Recovery had against him by another, but ought to plead the Recovery, and say further, that except of so much recovered against him, that he hath fully administred; for althor there is a Recovery, the Goods remain the Testator's, and to be administred. 20 H. 7.5. 2 Rol. Abr. 684, 9, &c.

Plene administravit pleaded, it was ruled, that an Acquittance shewed in Evidence for 100 l. paid to a Creditor is good in Discharge of an Inventory; and if the Debt was compounded for less than the Acquittance mentions, this shall come on the other Part to shew; and the rather it was held so here, because this Acquittance was from an Officer of the King's for Custom due; and they

do not use to take less than is due. Clayton 65.

Baraclough's Cafe. An amount with the same ton

56. In Debt against Executors, and Plene administravit pleaded, the Defendant cannot give in Evidence a Bond satisfied, where the Executor and Testator were Obligors. Per Coventry Lord Keeper. 33 Eliz. Perkins versus Perkins. I. per Pais 189. 1 Mod. 165. Rogers versus Danvers, contra.

although it were a just Debt, yet it is Evidence of Fraud. 1 Keb. 808. Brown versus Purchase.

58. An Action of Debt was brought against Executors; they are at Issue upon Assets in their Hands; it is good Evidence that they have sold Land by the Will of the Testator, and have the Money; and so is a Recovery in Trespass for Goods taken in the Life of the Testator. 3 H. 6.3.

7. S. Executor of the Testator W. he imparls, and therefore he cannot plead to the Writ that he is Administrator and not Executor, and therefore, by the Direction of the Court, he pleaded ne unq; Administer as Executor, and gave in Evidence that he is Administrator, and not Executor. Quod nota. 2 Bro. 16. Pl. 61. 9 Ed. 4. 4. & Dy. 305. Pl. 61.

tors pleaded, may give in Evidence that the Party is living? Wylde, Recorder of London, conceived they may; but the Court doubted. 1 Keb.

ATA Anonymus. State of the book et 301 balls of

Go mori

or. In Debt against the Heir who pleads Riens per Discent; Proof that the Father was seised, and that the Heir did enter after his Death, is well enough; for it shall be presumed Fee-simple till the contrary be shewn. T. per Pais 225.

62. In

nothing in Fee by Descent, &c. and in Evidence it appeared he had Fee, but depending upon an Estate-tail; and upon this there was Special Verdict; see by me this Issue is against the Desendant, for he ought to have pleaded this specially; and so it was done in Trasord's Case. Hil. 31 Eliz. and concluded, Unde debitum præd' solvere non petuit; and see of the Rent or Service depending upon this Reversion, and of what they shall be. Cl. 49. Anonymus.

63. In Debt on Bond against an Heir; if he plead Riens per discent, and the Plaintist reply Assets, he may give in Evidence, that the Defendant before the Writ purchased, aliened the Assets by Fraud and Covin, to defeat the Plaintist of his Debt; and that the Alienation is therefore void by the Statute 13 Eliz. altho' he did not plead it, because it is on the General Issue. 2 Rol. Abr.

684. I Pl. 4. month the sur this of how the

64. Mrs. Tempest and her Husband were fued upon a Bond made by the Wife, and Coverture tempore, &c. was pleaded; and to prove that Evidence was produced that she was married, but the Witness knew not the Minister or Priest by whom, or if he were in Orders or not; and the Judge did direct that the Coverture shall be well proved when a Bond is to be avoided by it and for the Suspicion he was a Popish Priest, it deferves no Favour, and his Orders shall be she wed, and that will be dangerous in another Kind; viz. Treason; and he said he knew a Nobleman put fore to it to avoid Bastardy in the like Case! In this Case the Jury was put upon Trial; and in the End, if it could have been proved he was a Priest, though Popish, it was holden good Evidence to prove the Marriage; but the Judge did helitate

an Art

hesitate in that, whether Proof was made that he

was a Prieft ? Clayt. 61. Anonymus. 1 both in from

mington prayed Stay of Trial in Issue on infra etatem: Wylde, Justice, said this must be pleaded, and the Party cannot be aided on Non est factum, but Feme Covert may; which Rainsford agreed. 3 Keb. 228. Cole versus Delawn.

made by the Master and Fellows of a College; if there were no Fellows at that Time, he must plead Non est factum, and give the Special Matter

in Evidence or r Ed. 4.4. the officer used firmisis

67. In an Action of Debt upon a Bond conditioned for the Performance of Covenants: Upon the Pleadings the Plaintiff assigned a Breach in cutting twenty Oaks, and the Desendant said quod non succidit viginti Quercus pradictas, nec earum aliquam modo & forma prout, &c. and the Plaintiff replied, quod succidit viginti Quercus prout ipse superius allegavit, & boc petit quod inquiratur per Patriam & prad Des similiter. The Jury sound the Desendant cut ten, and the Plaintiff recovered. Dyer 215. Pl. 67. Terril versus Dune.

68. Debt upon an Obligation of 400 l. conditioned for the Performance of Covenants in a Lease; the Defendant pleads Performance generally; the Plaintiff shews, that the Lessor by Deed enrolled, within the six Months, bargained and sold the Reversion to J. S. and T. D. and there being a Covenant in the Lease, that the Lesse at Michaelmas, (being the End of the Term) or after, upon Request, should deliver the Possession to the Lessor, his Heirs or Assigns; he alledgeth for Breach, that J. S. and T. D. the next Day after Michaelmas came unto the House and required of the Defendant the Delivery of

Pof-

Possession, and he had not deliver'd the Possession: And Issue being upon this Request, the Jury found that the said F. S. only came and required the Possession, and he did not deliver it, &c. The finding of the Demand made by one, is not warranted by this Issue: Sed non allocatur; for they Two having but one Title, the Demand by one of them is the Demand by both; wherefore it was a good Demand, and the Issue well found. 2 Cro. 475. Hingen versus Payn.

69. If Duress at D. is pleaded to an Action of Debt on Bond, on which Issue is taken, the Plaintiff shall not be admitted to give in Evidence that the Party was never at D. for Duress is the Effect of the Issue, and the Place is not travers—

able. 2 Rol. 681. Pl. 2.

70. Award to pay Money in or at the House of J. S. the Plaintiff saith it was not paid at the House, which, per Cur, is well enough; and if it were paid in the House, it may be given in E-vidence on Issue, that it was paid at, &c. Judgment for the Plaintiff in Debt on Bond. 1 Keb. 753. Fitzberbert versus Hind.

71. Debt on Bond to perform an Award, ita quod the Award be delivered to the Parties; in Evidence, Delivery proved to the Wife, is sufficient for the Jury to presume the Delivery to the Party himself. Per Hale, Norf. Summer Assizes, 1665. Trice versus Pratt, T. per Pais 188.

72. At the same Assizes, per Moreton, Justice, Delivery to the Party's Son is good Evidence.

Violet versus Cook, T. per Pais 188. 16 15 50 15.

Pote

73. In an Act for the more effectual Relief of Creditors in Cases of Escapes, and for preventing Abuses in Prisons and prevended privileged Places, there is this Clause and privileged resident and the control of the

And be it further enacted by the Authority saforefaid. That from and after the faid first Day of May, no Retaking or fresh Pursuit shall be given in Evidence on the Trial of any Issue in any Action of Escape against the said Marshal or Warden, or their respective Deputy or Deputies, or against any other Keeper or Keepers of any other Prison or Prisons as aforesaid, unfless the same be specially pleaded; nor shall any fpecial Plea be taken, received or allowed, une less Oath be first made in Writing by the Mar-6 shal or Warden, or their respective Deputy or Deputies; or by any other Keeper of any other Prison or Prisons aforesaid, against whom any fuch Action shall be brought and filed in the proper Office of the respective Courts, That the Prisoner, for whose Escape such Action is brought, did, without his Confent, Privity or Knowledge, make fuch Escape; and if such Affidavit shall at any Time afterwards appear to be false, and the Marshal or Wardens, or other 6 Keeper or Keepers of any other Prison or Prifons, shall be convicted thereof by due Course of Law, fuch Marshal or Warden, or other Keeper or Keepers of any other Prison or Pri-6 fons, shall forfeit the Sum of 5001. 8 & 9 W.3. . c. 26. fett. 6.

74. In Debt upon an Escape; if the Desendant plead nul Escape, he cannot give in Evidence

no Arreft. Bro. Gen. If. Pl. 89.

75. Debt upon an Escape was brought against the Desendant, Guardian of the Marshalsey, for suffering T. B. who was in Execution at the Plaintist's Suit to escape: The Desendant pleads that he did not suffer him to escape; and gave in Evidence that the said T. B. brought an Attaint to reverse the Judgment; and upon his Prayer,

the Court did bail him, that he might profecute his Attaint cum effectu: But this Bail was not entred upon Record. And it was held by Wray and the other Justices, that the Evidence was

good. I Cro. 5. Vast versus Gawdy.

76. In an Action against a Gaoler for Escape of a Prisoner in Execution, if the Issue is, that the Gaoler immediately after the Escape made fresh Suit; and on the Evidence it appears, that the Prisoner escaped out of the Prison by the Keeper's Negligence, and was abfent a Day and a Night before the Gaoler knew it, he having divers other Prisoners under his Care; but as foon as he did, he then immediately makes fresh Suit, and retakes the Prisoner; it is sufficient to prove the Effect of the Issue; for convenient Pursuit is immediate fresh Suit in Law. Trin. 10 Car. B. R. Rotulo 627. Refolved by the Court on the Evidence at a Trial at Bar between Hinton and Sir John Lenthall the Marshal; and on the like Issue it was resolved. Pasch. 11 Car. B. R. between Elton and Sir Fobn Lenthall. On the Evidence at a Trial at Bar, in which it appeared that the Escape was at nine at Night, and that the Notice and fresh Suit on which he was taken was at five a-Clock the next Morning. 2 Rol. Abr. 641. 4. - moleculation of manger is the deal faithing

and re moidable as of raw obyect of garrolling and property of the P.

The headed not folies have to the present and adente for the present at the folies are send and the angle of the first and the second and the very send the free country of the country of

dam picad at 15 mm, he sar par not an assistant no Arreft, F = 0, 140 F = 0, 150 mm in the call of the

CHAP. X.

Of Evidence in Actions of Trespass.

I. In Trespass for breaking his Close, Not guilty was pleaded; and on the Trial the Defendant gave in Evidence, that it was in a Highway; and per Cur', this is a special Justification,
and ought not to be given in Evidence on the
general Issue. And Holt Ch. J. said, in Case for distrubing the Plaintiff in his Common, on Not guilty pleaded, he had known the Defendant permitted to give in Evidence, that he had a Right to
Common there; but he never thought it Right,
nor ever allowed it. Wat son versus Sparkes,
I Salk. 287.

2. If the Trespass were on the 4th of May, and the Plaintiff alledgeth the same to be done the fifth of May, or the first of May, when no Trespass was done; yet if upon the Evidence it falleth out, that the Trespass was done before the Action brought it sufficeth: And this is warran-

ed by Littleton, Sect. 485. Co. Lit. 283.

3. In Trespass for breaking his Close, with a Continuando, it was moved by Coke, that the Plaintiff needed not to shew a Regress to have Damages for the Continuance of the first Entry, scilicet, for the mean Profits, and that appears by common Experience at this Day. Gawdy Justice: Whatsoever the Experience be, I well know that our Books are contrary, and that without an Entry he shall not have Damages for the Continuance, if not in Case where the Term or Estate of the Plaintiff in the Land be determined; and to such Opinion of Gawdy, the whole Court did incline;

incline; but they did not resolve the Point; because a Regress was proved. See 20 H. 6, 154 38 H. 6. 27. 1 Leon. 302. Rawlin's Case.

4. In Trespass with a Continuando, it was holden upon the Evidence, it is not needful to prove a Re-entry, in Case the Action is brought against the first Trespassor, as it ought to be done where it is against a Stranger, as Feosfee, &c. of the first Trespassor. Clayton 5. Sir Henry Anderson's Case.

5. A Trespass was laid the first of May with a Continuando, &c. and the Plaintiff could not prove the first Trespass, though the Diversis vicibus after, he could prove; and for this Cause he was nonsuited; the first Trespass is the Main. Clayt.

141. Walker versus Dawson.

6. In Trespass with Continuando to recover mean Profits, an Entry and Possession of the Land before the Trespass must be proved, and also another Entry after the Trespass. T. per pais 199.

7. For making a Trespass Continuando there ought to be a Re-entry of the Plaintiff; and for the not proving thereof, the Plaintiff shall have Damages only for the first Entry. T. per pais

234.

8. In Trespass quare Herbam & Blada cepit; and ter Verdict, Exception was taken in Arrest of Judgment, that no particular Species was expressed, and so in a new Action for the same Thing this would be no Plea in Bar by Averment, which the Court agreed; yet the Species must be given in Evidence; sed adjoinatur. 2 Keb. 42. Mascue versus Shepherd.

9. It was holden, that where a Man would reacover the mean Profits in an Action of Trespate, he must prove Entry into every Parcel, and not

into one Part in Name of all. Clay. 35. Gladel's Case.

Action of Trespass be brought for the mean Profits before the Lease; nothing shall be given in Evidence but the Value of the Profits, and not the Title, for otherwise long Trials would be infinite; and if betwirt the same Parties, or Under-Tenants, the Record is an Estoppel; but Quare (says the Reporter) if the Desendant be one who hath a Title, whether he may not give that in Evidence? 2 Sid. 239. Collingwood and Ramsey versus several Desendants. S. C. 1 Keb. 850. 1 Keb. 731. Sadler versus Taylor.

the Husband's or Master's Notice, put his Cattle into another's Ground, and an Action of Trespass is brought for the same against the Owner of the Cattle; if he pleads Not guilty, the Special Matter may not be given in Evidence, because it is contradictory to the Issue. Kel. 3. b. 2 Rol.

Abr. 682, 4. contra.

12. In Trespass de Clauso fracto, the Desendant pleaded, that the Plaintiff, with Intent to have an Action against him, order'd one of his own Servants to put the Desendant's Cattle into the Plaintiff's Ground, and that he the Servant accordingly did put them in, and that the Desendant, as soon as he had Notice of it, went and setched them out; it was objected to this Plea, that it amounted but to the General Issue; but the Court was of Opinion the Desendant might plead it because he thereby acknowledged that his Cattle committed the Trespass. 21 H. 6. 39.

13. In Trespass for breaking his Close at C. the Defendant justified at K. absq; boc, that he was guilty at C. and the Court allowed the Plea, and

would not compel the Defendant to plead Not guilty, but obliged the Plaintiff to reply, that the Defendant was guilty at C. Bro. Gen. Iff. 26. Dyer

19. Pl. 109. Draper versus Gapper.

14. If my Cattle escape into the Soil of andther, through the Fault of the Fences, which he ought to repair, I cannot plead Not guilty, and give this in Evidence, because such Evidence acknowledges the Trespass, and justifies it. 19 H. 8.

6. Co. Lit. 283.

15. In an Action of Trespass quare Domum & Clausum fregit, & bona asportavit, the Defendant in Truth committed the Trespass by Virtue of the Commission of Bankruptcy; and it was said by the Court, that because the Plaintiff declared for an Entry into his House, the Defendant cannot plead Not guilty, and give the Special Matter in Evidence, but must plead the Commission of Bankruptcy, and all the Special Matter; but if it had been for the taking of Goods only, he might have pleaded Not guilty. Quere rationem. Lit. 356. Anonymus.

16. In Trespass for pulling down the Plaintiff's House, the Defendant cannot plead there was no House, but shall plead Not guilty and give that in Evidence. Bro. Title Gen. Iff.

Pl. 59.

17. In an Action of Trespass against two, one justifies as his own Land, and the other pleads, that he affifted him to put his Cattle upon his own Ground. Per Cur', This is no Trespass to the Plaintiff, therefore he shall plead Not guilty, and give this Matter in Evidence. Bro. Gen. Iff. Pl. 66.

18. In an Action of Trespals, and Not guilty pleaded, the Defendant may give a Leafe for Years in Evidence; but not a Lease at Will, bea

cause this is determinable at Will. Bro. Gen,

Iff. Pl. 82.

by the Command of the Owner of the Land; but the Defendant shall plead Not guilty, and give this Matter in Evidence. Bro. Gen. Ist. Pl. 53.

20. In an Action of Trespass, the Desendant pleaded Not guilty; and if he might give in Evidence, that at the Time of the Trespass, the Freehold was to such a one, and he as his Servant, and by his Commandment, entered, was the Question; and it was faid by Coke, that the same might be so well enough; and so it was adjudged in Trivilian's Case; for if he by whose Commandment he entered hath Right at the same Instant that the Desendant entered, the Right is in the other, by Reason whereof he is Not guilty, as to the Desendant; and Judgment was given accordingly. I Leon. 301. Diersty and Nevil's Case. Kel. 61. b.

21. In Trespass for entering into the Plaintiff's Close, and taking away Corn; the Defendants justified as Servants to the Parson, and that the Corn was Tithes fevered from the nine Parts: to which the Plaintiff demurred specially, because this amounted to the General Issue of Not guilty; but per Cur', This is a good Plea; for as to the Breaking of the Close, such Matter cannot be given in Evidence: And Twisden said, Justice Crawley would not fuffer him to give fuch Matter in Evidence on Not guilty pleaded, in Trefpass for taking Corn only; but per Cur', if the Trespass had been only taking the Corn, this had been but the General Issue, and therefore the Demurrer good; as in Trespass for a Horse, it is no Justification to fay the Horse is 7. S. his Horse,

and that he as Servant took him; for if the Property be not in the Plaintiff, the Defendant may as well in Trespass as Trover be found Not guilty; but for the first Exception, adjornatur: At another Day, Kelynge Ch. J. said, it was as well pleaded as could be, the Justification going to both; but if the Action were only for the Tithe, this would be but the General Issue; which the Court agreed. Judgment pro Def. 2 Keb. 44. & 71. Minors versus Hunson.

22. On Motion of Thompson, in an Action of Trespass, for Bricks broken in a Wall, that the Defendant might have Liberty to plead specially, that this was the Freehold of the Lord of Derby, and that he as Servant broke, &c. It was said by Hale Ch. J. and Twisden, this is sufficient Evidence on Not guilty, and need not be pleaded no more by the Servant of a Stranger than by the Servant of the Owner of the Wall. 3 Keb. 286.

Bolton versus Thompson. 34 H. 6. 43.

23. In an Action of Trespass, the Defendant pleaded it was his own Freehold; and the Plaintiff replied, that he enfeoff'd the Defendant, on Condition to be void on the Payment of 201. in St. Paul's Church at Michaelmas following, which he paid accordingly at that Day and Place. The Plaintiff rejoins, that he had not paid him at the Day and Place appointed for the Payment; and at the Trial the Plaintiff shewed in Evidence, that the Money was paid to the Defendant a Month before the Day, and produced an Acquittance for the fame; and the Defendant demurred to the Evidence, and Dyer, Brown and Welfb faid, the Evidence will not maintain the Iffue: for though the Party may pay the Money at another Day and Place, if the other will receive it, yet is not the other bound to take it at another Day

Day and Place; and he being so limited as to Time and Place, he must either pay it accordingly, or plead the Payment before the Day specially; for if he pleads Payment at the Day, and proves by the Evidence that he paid it before the Day, it is not good, because no Duty till the Day, and on that Pleading the Day and Place are Part of the Issue; and yet it seems on a Replication of Assets at B. Assets at another Place may be given in Evidence; for Affets in one Place are Affets in every Place; and so on nil debet Payment before the Day may be given in Evidence, for the Debt is then discharged; and therefore the Party is quit for ever, and no Duty remains on the Day; but where it concerns an Act to be done it is otherwise; for an Act at one Day is not an Act at another; and if Executors plead Payment at the Day by themselves; it is not good Evidence to prove Payment before the Day by the Testator, for that does not prove the Iffue, and yet there is no Duty remaining at the Day; yet it ought to be specially pleaded. Mo. 47. Anonymus, S. C. Dal. 48. Sed quære as to the Authority of this Case; for it is reported in Dy. 2.22. Pl. 22. And all that Dyer fays is, that the Tury were not obliged, under Pain of Attaint, to find on fuch Evidence that the Money was paid at the Day.

24. In an Action of Trespass, the Desendant pleaded son frank Tenement, on which the Parties were at Issue; and the Jury found the Desendant took B. to Wise, who was seised in Fee of the Place in Question; by Virtue of which, he was seised in the Right of his Wise, and not otherwise; and by the Opinion of three Judges against one, the Plaintiff recovered. 2 And. 48. Anonymas,

25. In

27. In Trefpass brought by Rosse, for breaking his Close, and beating of his Servant, and carrying away of his Goods: Upon Not guilty pleaded, the Jury found this Special Matter; feilicet, That Sir Thomas Bromley, Chancellor of England, was feised of the Land, where, &c. and leafed the same to the Plaintiff and one A. which A. affigned his Moiety to Cavendiff, by whose Commandment the Defendant entered. It was moved, that that Tenancy in Common betwixt the Plaintiff and him in whose Right the Defendant justified, could not be given in Evidence; and so it could not be found by Verdict; but it ought to have been pleaded at the Beginning. But the whole Court was clear of another Opinion; and that the same might be given in Evidence well enough. Roffe's Cafe, 3 Leon. 83 & 94.

26. Note, That upon an Evidence given to a Jury, in a Case betwixt Berry and New-College in Oxford, it was ruled by Walmsley, Warbutton and Foster, Justices, in an Action of Trespass; if it appear upon the Evidence, that the Plaintiff hath nothing in the Land, but in Common with a Stranger; yet the Jury ought to find with the Plaintiff; and if the Defendant will have Advantage of the Tenancy in Common in the Plaintiff, he ought to have pleaded it: Nichols Serjeant was very earnest to the contrary, and took a Difference, where the Plaintiff and Defendant are Tenants in Common with a Stranger; but he was over-ruled. The Action was an Action of Trespass, Quare Clausum fregtt, &c. Cook and Daniel were absent. Godb. 172. Berry's Cafe.

27. Joint-tenancy cannot be given in Evidence, but must be pleaded in Abatement. Q 4 Jones Jones versus Randal. Hill. 1652. C. B. T. pet

pais 207.

28. In Trespass quare Clausum fregit, it is a Plea in Abatement to say the Plaintiff is Tenant in Common with another; but cannot be given in Evidence upon Not guilty, as it may where one Tenant in Common brings Trespass against the

other. I Vent. 214. Anonymus.

of Water out of the Defendant's Well; the Defendant pleaded in Abatement, that the other Defendant and Plaintiff where Tenants in Common of the Well; Plaintiff replies, that he was fole seifed, absq; boc, that he was Tenant in Common with any, and concludes to the Country. Holt; In Trespass it is no Plea in Abatement for the Defendant to say, he was Tenant in Common with the Plaintiff, because he may give it in Evidence on Not guilty; but here the Defendant, who was a Stranger, pleads Tenancy in Common in the Plaintiff with the other Defendant; and that he may well do. Farressy 104. Haywood vertibs Davis.

30. In Trespass against one for gleaning on his Ground. Per Hale, Norf. Summer Assize, 1668. The Law gives Licence to the Poor to glean, &c. by the general Custom of England, but the Licence must be pleaded specially, and cannot be given in Evidence on non culp. I. per pais 202.

3r. In Trespass, Tender of two Shillings Sixpence in Amends was pleaded, and averred that the said Sum was sufficient; and Issue was taken upon the Sufficiency of the Amends: In this Case, the Desendant began the Evidence to prove the Amends sufficient, and was directed to shew the Trespass, what it was, and prove the Tender, &c. and the Plaintiff in this Case was

not permitted to shew or prove more Trespasses than one, of which he hath declared, and that the Plaintiff fets forth shall be the Trespass, and not that the Defendant fets forth, if they vary; then the Plaintiff did prove it was to the Value of five Shillings; and the Defendant would have left it to the Jury, whether the Trespass of two Beafts in April, in Grass-ground, could be of that Value? But the Judge would not permit it fo for the Tury to Judge, as if no Proof was, when the Witness had expresly proved it to the Value of five Shillings, when the Defendant had failed to make Proof what the Trespass was, so to apply his Amends tendered to that Trespass in which he failed before. Clay. 70. Richardson's Cafe.

32. It was agreed by the whole Court and the King's Attorney General, that in an Action of Trespass for breaking his Close, if the Defendant pleads, that the Place where the Trespass is supposed to be committed, is six Acres of Land in D. which are his Freehold, and the Plaintiff reply the fix Acres in Question are his Freehold, and not the Defendant's; if the Defendant hath fix Acres in D. and the Plaintiff fix others, the Defendant cannot give in Evidence that he committed a Trespass in his own Soil; but by his Plea it shall be construed that he meant the Plaintiff's fix Acres, and not his own; because, until he gives the Place, in which the Trespass is supposed to be committed, a Name, the Plaintiff need not make any new Affignment, forasmuch as he has not varied from the Meaning of the Plaintiff, if he does not give the fix Acres a Name; as by faying the fix Acres in D. called Greenmead. Dy. 23, Pl. 147. Anonymus.

if the Plaintiff in an Action of Trespass makes a new Assignment, and gives the Place a particular Name, and Assigns Buttals to the East, West, North and South, and names the Buttals also, whether he ought to prove the Abuttals true, as well as the Name of the Place. Some were of Opinion, that he ought, because every Word that is in the new Assignment, to describe the Place more certainly to the Jury, before the Words scil' alia quam in Barra, are effectual, and the Abuttals are Parcel of the Assignment; sed Quere. Dyer 161. Pl. 46. Sanders versus Burrough.

vering, In quodam loco vocato Calverfield, abuttan' à parte australi super molendinum in Tenura J. S. If the Defendant plead Not guilty, on the Trial of this Issue the Plaintiff must prove his Abuttals. Hill. 37 Eliz. B. R. Noel versus Sands. Agreed by the Court and Counsel; and in this Case he must prove all his Abuttals, for it is not sufficient to prove the Mill is to the South; but he must go further, and prove it was once in the Tenure of J. S. and for not doing it the Plaintiff was nonsuit. Hill. 37 Eliz. B. R. Noel versus Sands. 2 Roll. Abr. 677. Pl. 1 & 2. S. C. Golds. 124.

35. In Trespass for entering his Close in Calvering, In quodam loco vacato Calversield, abuttan' à parte australi super Molendinum, &c. It is sufficient Proof of that Abuttal that the Mill lies Southwards, although there is a Highway between the Mill and the Land. Hill. 37 Eliz. B. R. Mere versus Sands. Per Cur. Adjudged. 2 Rol. 678. Pl. 1.

36. If Abuttals are affigued to be towards the East, tho' on the Evidence it appears they are Northwards;

Northwards; if they have a Point to the East, it is sufficient. Pas. 7 Jac. Mildmay versus Dean.

Per Cur'. 2 Rol. Abr. 678. Pl. 2.

37. In an Action of Trespass, the Defendant justified, by Reason that he and all those whose Estate he had, had Common in the Place for so many Beasts, beyond the Memory of Man; and the Parties were at Issue on the Prescription, and the Plaintiff gave in Evidence that he had common of Vicinage, appendant to his House; and it was refolved, that the Evidence did not maintain the Issue; for although both begin by Prescription, yet Common of Vicinage does not begin by a bare Prescription, but a Prescription on Consideration that the other shall have Common in like Manner in his Soil. 13 H. 7. 13.

38. Trespass de Clauso fracto. The Defendant prescribes to have Common. And Issue thereupon. The Jury found, that the Defendant had Common there by Prescription, prout, &c. paying for it every Year a Penny to the Plaintiff. And all the Court resolved, that the Verdict was found for the Plaintiff, and against him who pleaded the Prescription; for the Prescription is entire, and the Payment of a Penny annually is Parcel of the Prescription; and it shall be intended to be as antient as the Common; and that they began at one Time. I Cro. 546. & 563. Lovelace versus Reignolds, S. C. 2 And. 67. S. C. No. 59.

39. In a Trespass by the Plaintiff, as Commoner of Sir Robert Henly in Newland in Wooton-Glanvil, for Common appurtenant. The Defendant justifies under Sir W. C. to inclose as Lord of the Soil, alledging this to be only Common of Vicinage, which was agreed might be inclosed; the Evidence for the Plaintiff was, by foddering

7800 1

and driving into the Place in Question: (by Sir Winston Churchill enclosed) The Defendant's was by Entry at a certain Place, and foddering in the other by Leave; and by the Inclosure of Part of Blackmore Heath, which was the grand Common, that inclosed all the rest; which Inclosure of Part, though but of one Acre, made the Prescription sail for the Whole, being not excepted; and thereupon the Plaintiff was nonsuited.

3 Keb. 24. Harding versus Brooks.

40. Thomas Kemp brought Trespass for Breaking of his Close, against Carter; and upon pleading, they were at Issue; if the Lord of the Manor aforesaid granted the said Lands per copiam Rotulorum curiæ manerii præd' secundum consuetudinem manerii præd'? And it was given in Evidence, that within the faid Manor were divers customary Lands, and that the Lord now of late at his Court of the faid Manor granted the Land, Bc. per Copiam Rotulorum Curia, where it was never granted by Copy before: It was now holden by the whole Court, that the Jury was bound to find Dominus non concessit; for notwithstanding that de facto Dominus concessit per Copiam Rotulorum Cur', yet non concessit secundum consuetudinem manerii prad'; for the faid Land was not customary, nor was it demisable, for the Custom had not taken hold of it. In the same Case it was also shewed, that within the said Manor some customary Lands are demisable for Life only, and fome in Fee; and it was faid by the Lord Ander son, that he who will give in Evidence these feveral Customs, ought to shew the several Limits, in which the feveral Customs are feverally running, as that the Manor extends into two Towns, and that the Lands in one of the faid Towns are grantable for Lives only, and the

Lands in the other in Fee; and he ought not to shew the several Customs promised valere through the whole Manor. I Leon. 55. Kemp verfus Carter.

Timber, the Desendant pleaded a Custom within the Manor, to have the same as Estovers, to be burned in Terris & Tenementis; and Issue being taken on the Custom, the Desendant gave Evidence only of a Custom, as to the Messuage, and it was adjudged that this Evidence did not maintain the Issue. Godb. 234. The Bishop of Chi-

chefter and Strodwick's Cafe.

42. On a Trial at Bar concerning the River of Wallsleet, the Question was, Whether —— had not the Right of Fishing there, exclusive of all others? Hale. In case of a private River, the Lord's having the Soil is a good Evidence to prove that he hath the Right of Fishing; and it puts the Proof upon them that claim liberam piscariam. But in case of a River that flows and reflows, and is an Arm of the Sea, there prima facie it is common to all; and if any will appropriate a Privilege to himself, the Proof lieth on his Side. I Mod. 105. Anonymus.

43. In Evidence to a Jury at Bar in Trespass for a several Fishing: Upon Not guilty pleaded, if the Plaintiff derive a Title as high as the Abbeys, he need not shew any Patent or Derivation from the Crown, but the constant Enjoyment is sufficient, unless one be sued by the Crown, which Twisden said, he knew to have been ruled in a former Case, wherein he was Counsel. A several Piscary usq; ad silum Aque cannot be counted on. But by Wyndham, Such Evidence may be given of such a Piscary by Meets

Meets and Bounds. 1 Keb. 290. Sir C. Guife ver-

A4. In Trespass of Breaking his Close; upon Not guilty pleaded, he cannot give in Evidence that the Beasts came thro' the Plaintiff's Hedge, which he ought to keep; nor upon the General Issue justify, by Reason of a Rent-Charge, Com-

mon, or the like. Co. Lit. 283.

45. In an Action of Trespass for several Things against the two Defendants, and declares to his Damage, &c. The Attorney for the Defendants pleaded Non fum informatus, and Judgment thereupon was given severally for the Plaintiff, and Writs to enquire of Damages issued out, and were return'd. It was now moved that the Writs should not be filed, because the Plaintiff at the Time of the Enquiry, did not prove they were his Goods, but proved only the Value of them : and a Difference was taken at the Bar between an Action confessed, and a Non sum informatus. For the Property of the Goods is also confessed in the first Case to be in the Plaintiff; but it is not so in the other; for there Judgment paffeth without the Defendant's Privity, and only for want of Pleading; as in the Case of a Nibil dicit. But the Court held that both Cases were alike, and that the Plaintiff is not bound to prove his Property in either of them, because the Writ commands that the Value only shall be enquired of; and if the Plaintiff should be bound to prove his Property, and fail thereof, it would be in Destruction to the first Judgment, which cannot be; but it is otherwise where Not guilty is pleaded, for then the Trespass is denied, which must be proved and tried by the Jury; and there in that Case both the Value and Property do

they

Welsh and Over, S. C. Telv. 151. S. C. Brown 214.

46. In an Action of Trespass against several for the Taking the Plaintiff's Beafts and detaining them until a Fine of 101. was paid; the Taking was apud Harewell. Samwell pleaded Non culp'; the other Defendants juftified, because Harewell is within the Hundred of Harewell, and the Sheriff's Turn of the faid Hundred; and that at fuch a Leet within the faid Hundred it was presented, that the Plaintiff ought to repair fuch a Highway, and had not repaired it, wherefore the Pain of to l. was affeffed upon him to repair it before fuch a Day; and it not being repaired, it was presented at the same Day; and thereupon the faid Pain estreated, and so justifies. The Plaintiff replied, that the Bishop of Winton was seised in Fee of the Manor of Harewell, and he and his Predecessors have had a Leet of all the Inhabitants there, and traverfeth that it was not the Leet of the Hundred, and they were thereupon at Issue, and found for the Plaintiff, for both Issues by a Jury at the Bar. And upon the Evidence, the Defendant would have proved it to have been inquirable in the Hundred, because the Jury of the private Leet did not enquire and redress it; for it was said, that altho' there be private Leets, yet as to this Purpose, they are within the Leet of the Hundred, to enquire of Things by them omitted to be enquired. being publick Nusances. To which the Court agreed: But here, as the Iffue is joined, the Question is, Whether it be within the Hundred-Leet generally or not, for fuch a particular Purpose? But this ought to have been particularly pleaded, and shewn to the Court; and so

they deliver'd it as Law to the Jury: Where upon the Jury found for the Plaintiff. 2 Cross 551. Loader versus Thomas Samwell and three others.

47. Pawlet brought an Action of Trespass against one Lawrence, Parson of the Church of Dee, for the Taking of certain Carts loaded with Corn, which he claimed as a Portion of Tithes in the Right of his Wife; and supposed the Trespass to be done on the 27th of August, 29 Eliz. and upon Not guilty it was given in Evidence on the Defendant's Part, that the Plaintiff delivered to him a Licence to be married, bearing Date the 28th of August. 29 Eliz. and that he married the Plaintiff and his faid Wife the same Day, so as the Trespass was before his Title to the Tithes: And it was held by the whole Court, that the Matter did abate his Bill: But it was holden, that if the Trespass had been assigned to be committed one Day after that, it had been good; but now it is apparent to the Court, that at the Time of the Trespass assigned by himself, the Plaintiff had not Title, and therefore the Action cannot be maintained upon that Evidence; for which Cause the Plaintiff was nonfuit. I Leon. 104. Pawlet versus Lawrence.

48. Plowden the Son brought an Action against Plowden the Father, for Taking the Plaintiff's Wife cum bonis viri. And the Case was, That he did reject and eject his Wife, without giving of her Alimony; for which she had Sentence in the High Commission Court; and the Desendant took those Goods for the Alimony of the Wife; and Justice Berkley said, that the Desendant might plead Not guilty. March 11. Plowden vermight plead Not guilty. March 11. Plowden vermight.

fus Plowden.

49. In Trespass for taking Goods, if the Goods are really restored to the Plaintiff, and yet he proceeds in his Action, upon Not guilty pleaded the Desendant may give this in Evidence in Mitigation of Damages. 2 Bro. Gen. Issue 11 & 15.

Hawks, the Defendant pleaded Not guilty, and gave in Evidence, that the Plaintiff leafed a Wood to him for twenty Years, and that during the Term the Hawks bred in the Wood; and it was held good Evidence. 2 Bro. Gen. Isl. 43.

51. In an Action of Trespass for beating J. S. the Plaintiff's Servant; the Defendant may plead that J. S. is not his Servant, or may give it in

Evidence. 5 H. 7. 3.

52. In an Action of Trespass for beating his Servant, per quod Servitium amisit, the Defendant may plead Not guilty, and give in Evidence a Justification of the Battery, from which no Loss of Service ensued; as a Thrusting away. 2 Rol.

Abr. 682. Pl. 5.

53. In an Action of Trespass for Taking of Goods, the Defendant would have pleaded, that the Goods were the Goods of J. N. who gave them to him; by Virtue of which he took them, absq; boc, that he took any Goods of the Plaintiff; but the Court ordered that the General Issue should be entered, and this Matter given in Evidence. 2 Bro. Gen. Iss. 14.

54. Note; It was resolved by all the Judges, that if my Dog chases the Sheep of a Stranger, or kills one without my Incitement, I may give this Matter in Evidence on Not guilty. Dy. 29.

Anonymus, Pl. 125.

55. Not guilty is a good Issue, if the Defendant committed no Battery at all; but regularly by the Common Law, if the Defendant have

Cause of Justification or Excuse, then can he not plead Not guilty; for then upon the Evidence it shall be found against him, for that he confesseth the Battery, and upon that Issue cannot justify it; but he must plead the Special Matter, and confess and justify the Battery. Co. Lit.

283. a.

56. There is a Difference as to the Evidence on a Declaration of Trefpass, Quare Clausim fregit & alia enormia ei intulit, as to the Ground of the Action; for when it arises ex turpi causa, the particular Wrong may be given in Evidence on fuch a general Declaration, and the Party shall not be obliged to shew it on Record; but in all other Cases the Special Matter must appear in the Declaration; nor shall any Evidence be given of Facts that are not in it. 2 Sid. 225. Sippora ver-

fus Baffet, S. C. I Keb. 737.

57. In an Action of Battery, and fon affault demesn pleaded; the Defendant proved the Plaintiff struck him first, then the Plaintiff shewed in Evidence the Defendant struck his Horse, which was drawing in the Cart, first, to have stopped him from passing, the Defendant being High Constable, and the Plague then being at Pomfret, from whence the Plaintiff came; and it was ruled by the Judge, that this had been a good Matter of Justification, if the Defendant being an Officer, had pleaded Not guilty; but not upon this particular Plea and Issue, that it was of the Plaintiff's own Affault; for this striking the Horse is such an Affault upon the Plaintiff's Goods, as he might justify the striking the Defendant again, and the stopping the Horse is the stopping the Plaintiff himself; and so directed to find this Isfue against the Defendant. Clay. 109. Booth verfus Jenkenson. 58. If

58. If the Plaintiff plead fon affault, he cannot give in Evidence that he made no Battery; for he acknowledges the Battery by his Plea. Keilw.

55. b. Gulford versus Gainsford.

59. In Trespass of Assault, Battery, and Wounding, the Defendant pleaded the Plaintiff began first, and the Stroke he received, whereby he loft his Eye, was on his own Affault, and in Defence of the Defendant; and on Trial at Bar now by the Evidence it appeared, the Plaintiff threatned the Defendant, and faid, Were it not Affize Time, he would tell more of his Mind. which was faid bending his Fift, and with his Hand on his Sword; yet per Cur', this is no Affault, as it would be without that Declaration; but it was farther fworn, the Plaintiff with his Elbow punch'd the Defendant, which if done in earnest Discourse and not with Intent of Violence is no Assault, nor then is it a Justification of Battery after a Retreat; as Phineas Andrew's Cafe. - And the Jury not believing the Defendant, found for the Plaintiff, and gave 500% Damages. 2 Keb. 545. Turbervile versus Savadge.

60. In an Action of Battery, which was laid in the Declaration to be the 18th of Feb. 1621; the Defendant did plead son assault Demesne, &c. and at Issue upon that, the Defendant prov'd an Assault by the Plaintiss, but another Day; and ruled that this doth not prove this Issue for the Defendant, because the Justissication shall refer to the Time lain in the Declaration, if the Defendant do not difference the Times in his Plea; and in such Case, when the Defendant intends to shew the Assault was at another Day or Place, he shall shew that such a Day before that in the Declaration, as here, the 8th of February, the Plaintiss did him assault, and would have beaten him,

and traverse the Day in the Delaration: But see in the Case of an Officer, who is not tied up to special Pleading, it seems he upon Not guilty may vary in his Evidence, to justify from the Time in the Declaration, &c. Quod nota. And the Frejudice may come to the Plaintiff's being unprovided perhaps in such a Case to a Reply; whereas when the Matter is by Pleading brought to a Special Issue, he knows his Work, &c. Clay. 110.

Hardcaftle verfus Lockwood.

61. Trespass of Assault, Battery, and Wounding, 1 Aug. 13 Car. The Defendant justifies in his own Defence, by Reason of an Assault made by the Plaintiff; Issue being thereupon, the Defendant gives in Evidence, an Affault and Battery by the Plaintiff, 2 Julii 13 Car. before, and that it was in his own Defence, and produced divers Witnesses to prove it; the Plaintiff shews, that the Battery which he intended was 9 Julii 13 Car. and he produced divers Witnesses to prove that. And Littleton, the King's Sollicitor, and others of Counsel with the Defendant, infifted, that it was no Evidence; for the Plaintiff ought to have made a Special Replication, and shewn that Special Matter. But all the Court held, it was not requisite; and if another Day had been shewn in the Replication, it should be a Departure: But it sufficeth to shew it in Evidence to be done at another Day, sans son assault, for the Jones faid, if they had Day is not material. both agreed upon one Day, it should have been specially pleaded: But Brampston held it was all one; and as it is now pleaded to be at feveral Days, it is clearly unnecessary: And the Solicitor urged, that it should be found specially: But the Court said, it was so clear, they would not have it so found. And the Jury gave 100 l. Damagés.

Damages. 3 Cro. 514. Thornton versus Lyster.

Contra, 2 Rol. Abr. 680. Pl. 3.

62. In an Action of Assault and Battery, if the Defendant pleads fon assault, and agrees with the Plaintiff in the Day and Year, and the Plaintiff reply, de Injuria sua Propria, and the Defendant gives in Evidence, that the Plaintiff struck first, the Plaintiff cannot give in Evidence a Battery at another Day; for when the Defendant agrees with the Plaintiff as to the Day, and the Plaintiff takes Issue, the Place and Day are made Part of the Issue. Per Cur. 2 Rol. Abr. 687. Pl. 3.

Down versus Shumsbee. 63. An Action of Affault and Battery was brought, and there was a Demurrer upon the Evidence: And the Case was, that the Defendant the Day specified in the Declaration said, that the Plaintiff assaulted the Defendant, and in Defence of himself justifies the Beating; the Plaintiff replies that he did it of his own Wrong, without any fuch Cause; and in the Evidence the Defendant maintained, that the Plaintiff beat him the Day mentioned in the Declaration, and in the fame Place: And the Plaintiff perceiving that, gave in Evidence that the Battery was made at another Day and Place, to wit, &c. which was the Cause of the Special Verdict; for if there be two Batteries made between the Plaintiff and Defendant at divers Times, the Plaintiff is bound to prove the Battery made the fame Day in his Declaration, and shall not be admitted to give another Day in Evidence, by the Opinion of the whole

Court. 1 Brown 233. Downs versus Skrymshaw.
64. In an Action of Trespass for Assault and Battery, the Case was this; The Plaintiff in his Count supposed the Trespass to be made the 1st of May 8 Jac. at such a Place; the Desendant

246

pleads, that the Plaintiff the same Day had affaulted and beaten him, and that the Defendant laid his Hands upon him to defend himself, and if any Hurt came unto him, it was by his own Wrong, the which is the same Trespass, for which the Plaintiff hath complained against him. The Plaintiff replies, of his own Wrong, without any fuch Cause, upon which Issue was joined; and at the Nisi prius for Justification, the Defendant produced Witnesses, which proved an Assault to be made by the Plaintiff upon the Defendant long fince, that is by the Space of a Year before the Day contained in the Count, and that at this Time, the Defendant to defend himself hath assaulted the Plaintiff; and upon this Evidence the Plaintiff demurred, in so much that this proves an Assault made at another Day than is contained in the Count; and the Defendant by pleading hath confessed an Assault and Battery made upon the Plaintiff the Day contained in the Count, and now upon Evidence proves his Justification at another Day: And if this Evidence was sufficient to prove his Justification was the Question; and if by this pleading the Day be made material; in which it was agreed by the Court and Counsel alfo, that if the Defendant had pleaded Not guilty, the Day had not been material; but the Plaintiff might have given in Evidence any Battery before the Day contained in the Count, or after, before the Action brought; and this is sufficient to prove his Declaration; but the Parties, that is, the Plaintiff by his Count and Replication, and the Defendant by his Justification, have agreed of the Day; and for that, if they may now vary from that, it was moved, and fo it was adjourned. 2 Brown. 183. Downes versus Skrymsbaw. Vide 19 II. 6. 47. 8 2 R. 3. 9.

65. In a Bill of Sewers there is this Claufe : If any Action of Trespass, or other Suit, shall happen to be attempted against any Person or Persons, for taking any Distress, or any other Act doing, by Authority of the faid Commission, or by Authority of any Laws or Ordidinances made by Virtue of the faid Commission, the Defendant or Defendants in any fuch Action shall and may make Avowry, Conusance or Justification for the taking of the same Diftress, or other Act doing, touching the Pre-' misses, or of any of them; alledging in such Avowry, Conusance or Justification, that the faid Diftress, Trespass, or other Act whereof the E Plaintiff complaineth, was done by Authority of the Commission of Sewers for Lot or Tax affested by the faid Commission, or for such other Act or Cause as the said Defendant did by Authority of the same Commission, and according to the Tenor, Purport and Effect of this present Act, made the 23d Year of the Reign of our Sovereign Lord King Henry VIII. without any Exf pressing or Rehearfal of any other Matter or Cir-6 cumstance contained in the present Act, or any 6 Commission, Laws, Statutes or Ordinances thereupon made; whereupon the Plaintiff shall be ad-' mitted to reply, that the Defendant did take the faid Distress, or did any other Act or Trefpass supposed in his Declaration of his own Wrong, without any fuch Cause alledged by the faid Defendant; whereupon the Issue in every fuch Action shall be joined, to be tried by Verdict of twelve Men, and not otherwife, as is accufromed in other Personal Actions: And upon the 'Trial of that Issue, the whole Matter to be given on both Parties in Evidence, according to the very Truth of the same. 23 H. 8. c. 5. feet. 11. R 4 CHAP.

CHAP. XI.

Of Evidence in divers Actions.

Rover, for Million Lottery Tickets, upon Evidence it appeared, That the Plaintiff had given the Tickets in Question to a Goldfmith to receive the Money due on them: That fome Payments were due, that fome were not; that this Goldsmith had received Tickets of the Defendant, and given a Note to pay him fo many Million Lottery Tickets; that the Plaintiff's Tickets were delivered to the Defendant upon this Note. It was infifted, That this Note under the Goldsmith's Hand could be no Evidence against the Plaintiff, but it was read. And Holt Ch. Just. faid, That the Way and Manner of Trading is to be taken Notice of, and therein the best Proof that the Nature of the Thing will afford is only required: When Goldsmiths give their Notes no Witnesses are by, and their Notes to pay Money or Tickets are Evidence of the Receipt of Money. If Money is stolen and paid to another, the Owner of the Money can have no Remedy against him that received it. But if Bank-Notes, Exchequer-Notes, or Million-Tickets, or the like, are stolen or lost, the Owner hath fuch a Property or Interest in them as to bring an Action for them, into whatfoever Hands they are come: Money or Cash is not to be diftinguished; but these Notes or Bills are distinguishable, and cannot be reckoned as Cash, and they have diffinct Marks and Numbers on them. He agreed, that in this Case, if the Exchequer, or any private Person had paid to the Goldsmith

the Money or the Tickets, it would have been a good Payment against the Owner; but whether it would be fo where Tickets not due are bought for a valuable Confideration, he doubted; but as the Cafe was, the Goldsmith here having Tickets both of the Plaintiff's and of the Defendant's, the Delivery of the Plaintiff's Tickets to the Defendant was no Change of the Property, or any Confideration; for tho' the Owner gave the Goldsmith Power to receive Money for the Tickets, he did not give him Power to change them for other Tickets, and accordingly a Verdict was for the Plaintiff. Ford v. Hopkins, I Salk. 283. See the Case of Brown and Marsh in Chief Baron Gilbert's Rep. 154. An Argument and Debate on the Question, whether on the Statute. 3 & 4 Anna, cap. 9. The Want of Consideration of a promissory Note might be given in Evidence: The Words of the Statute are, 'That all Notes in Writing, which after the first Day of May, 1705. shall be made and figned by any Person or Persons, Bodies Politick or Corpofrate, or by the Servant or Agent of any Corporation, Banker, Goldsmith, Merchant, or 'Trader, who is actually entrusted by him, her, or them, to fign fuch promiffory Notes for her or him, or them, whereby fuch Person or Persons, Bodies Politick or Corporate, his or their Servant or Agent, as aforefaid, doth or fhall promife to pay to any other Person or e Persons, Bodies Politick or Corporate, his, or their Order, or Bearer, any Sum or Sums of Money, the faid Sum or Sums fo mentioned in fuch Note, shall be taken and construed to be by Virtue thereof due and payable to any fuch Perfon or Perfons, Bodies Politick or Corporate to whom the same is made payable.' On the

the Construction of this Statute, the Court was divided in the Point supra: The two puisne Judges held, That fince the Statute made it payable by Virtue of the Note, the Consideration of the Note was not inquirable no more than the Consideration of a Bond; and on a Bond the Defendant can only plead Non est factum in a Court of Law; and if it be fealed and delivered. which are the only Solemnities of Contracting appointed by Law, nothing can be given in Evidence touching the Confideration. But the other two Judges thought there was a great Difference between a Note and a Bond, notwithstanding the faid Statute; for in the Case of a Bond where there were Solemnities of Contracting, (viz. Sealing and Delivery) tho' there was no Confideration, if there was no Fraud in obtaining the Bond, the Money was a Gift in Law to the Obligee; but the Note was no more than a simple Contract. And tho' the Statute fays, the Money shall be due and payable by Virtue of the Note, That only makes the Note it felf an Evidence of the Confideration, which it was not before the Statute, as appears by the Cases of Clark versus Martin and Potter versus Pearson, I Salk. 120. But tho' the Note it felf is now Evidence of the Consideration, yet it is not conclusive Evidence, but turns the Proof upon the Defendant, to shew there was no Consideration given for such a Note; and fo he can shew, That it is still but a simple Contract, and therefore but a Nudum pattum unde non oritur actio. And of this Opinion was Lord Chancellor King, and directed it to be fo ruled at Nisi prius.

2. Note; This Matter had been much debated, and therein this Case was put, That if A. forged a Bank-Note, and gave it as a Consideration.

so B. for B.'s Note, or if A. should have given Brass-Money for the Note; could not this Want of Confideration be given in Evidence? If not, A. might recover against B. where there was no Debt : and certainly the Statute did not defign, that a Man should recover where there was no Debt: for the Statute only makes promissory Notes as Bills of Exchange; and tho' both the Acceptor and Indorfor are bound to pay those Bills whether they had receiv'd any Consideration or not, because the Acceptor accepts it for the Honour of the Drawer, and the Indorfor negotiates it, yet the Drawer of the Bill is not obliged to pay it to the Person in whose Behalf 'tis drawn, unless he had paid him a Consideration; but the owning a Value received is Evidence prima facie, That a Consideration has been paid to the Drawer of the Bill. See I Salk. 125. 4 Mod.

3. The Abbot of Bukefast brought a Writ of Account against Simon Horwill, as Bailiff to the faid Abbot in R. and fer forth in his Declaration how that the Defendant was his Bailiff in Re from the Michaelmas in fuch a Year till the Michaelmas following, having Power, during the faid Term, to demise the said Tenements, Parcel of the faid Borough, and to collect the Rents of the faid Abbot, and all his Profits arising in the faid Borough, and to account with the faid Abbot for the same: The Defendant pleaded he was his Receiver, and traverses his being Bailiff, on which Issue was taken; and the Plaintiff to maintain his Writ, on the Evidence shew'd, that there was an immemorial Custom there, that all the Freeholders of the Abbot and his Predecessors, in the faid Borough, once a Year, at the Court of the faid Abbot, about Michaelmas, were used of

themselves to chuse a Person whom they called Portreeve, to collect all the Rents arising to the Abbot from his Freeholders, and that he used to account before the Auditors of the Abbot, and to demand and receive Allowance of the Auditors for Tenements in Decay; and it was further fnewn in Evidence, that the Defendant was chose in Pursuance of this Custom, and the Defendant demurr'd to this Evidence; and after much Debare, the whole Court were of Opinion, that the Evidence did not maintain the Declaration, because the Declaration is against the Defendant generally as Bailiff; and the Evidence charges him in a special Manner, and the Plaintiff ought therefore to have declared specially. Keil. 75. b. The Abbot of Bukefast versus Horwill.

4. If one bail a Sum of Money to A. B. to be deliver'd over after as a Gift or Loan, and he accordingly deliver it over, and notwithstanding is sued in a Writ of Account as Receiver, and pleads Ne unq; fon Receiver, he cannot give the Matter in Evidence, nor shall the Jury have any Regard to it, because he ought to have pleaded the Special Matter, for he was once conditionally accountable, that is, if he had not paid the Money over. Dyer 196. Pl. 43. Speake versus Hungerford.

5. An Action of Account was brought against the Desendant as Receiver of the Plaintiff's Money, if the Desendant plead that he never was Receiver, and hath a Release from the Plaintiff, thereby he shall lose the Benefit of his Release, for that he cannot give that in Evidence upon such Issue. I Brow. 24. Willoughby versus Small.

6. Thomas Harrington brought an Action of Account against John Dean, to render him an Account of 2001. in Money, received by the Hand

of Sir John Rotheram Knight, &c. The Defendant pleaded, that he was never his Receiver of any fuch Sum, or any Part thereof, by the Hands of the faid Sir John Rotheram. The Jury found that the faid Sir John Rotheram was indebted unto Harrington in 2001. and that Harrington willed Dean to require and receive the Money of Rotberam for him; whereupon Rotheram prayed Dean to borrow 200 l. for him of any Body, and to pay it over from him to Harrington; and he accordingly borrowed 200 l. of one Mrs. Stanbope for Rotheram, and received it of her to pay over unto Harrington, and he appointed his Wife accordingly to pay it over unto Harrington, and Rotheram gave Bond to Mrs. Stanbope for it. And if upon the whole Matter, &c. And it was adjudged una voce that the Action was well brought, and that the Verdict did maintain it, in fort as it was laid; for it appears plainly from the Beginning to the End of the Case, that Dean the Defendant was made and took upon him to be Servant as well to Harrington, to ask and receive 200 l. as to Rotheram, to borrow where he could 200 l. and that not only to the Intent to pay it over unto Harrington, but with an express Commission to pay it over indeed. Both which Commissions he did accordingly execute in all the Parts; fo that tho' it appear not that Mrs. Stanhope lent the Money, to be paid over unto Harrington, yet it is found that Dean received it, as lent to Rotheram; whereby it becomes Rotheram's Money, the rather when he had given Bond for it; and that the same Receipt was to pay over unto Harrington by Force of the first Commission received from Rotheram, and the Intention of Dean himself, so as in the same Instant it became first Rotheram's Money, and by him as it were delivered over unto Dean, to be paid

paid unto Harrington for his Debt (tho' it never came unto Rotheram's own Hand actually) and fo it became Harrington's Money, received by the Hands of Rotheram according to the Declaration.

Hobart 36. Harrington verfus Dean.

7. In Action qui tam for felling of Wines by Praud; after General Iffue, the Party waived that, and pleaded 31 Eliz. c. 3. that being on a Penal Law, it must be in a Year, because this being Debt, and not an Information, he could not take the General Issue; but per Hale, Ch. J. Since 21 7ac. 1. c. 4. this may be given in Evidence as well in Debt as Information, upon which the Court agreed, ex motione Winnington, to accept the Plea; and the Parties agreed to accept General Iffue, this being for new Stores without Account; but in Action for the Duty, it is not within the Statute on Nil debet; and in Information for Seisure, non importata fuerunt contra formam Statuti is not the General Issue, as in other Informations it is, or Nil debet, at Pleasure; and both Statutes extend to all Penal Laws. 2 Reb. 859. Burleigh versus Child.

8. In Case of Tithes, upon the Statute of 2 Ed. 6. the Rector Plaintiff was pressed by the Desendant's Counsel to prove his Admission and Institution, and the Reading of the Articles of the Church, &c. but it was now ruled by the Judge, that he should not now be put to it, for those Things shall be presumed; and if otherwise, let the Desendant prove it: Quod nota, put to prove a Negative. Clayt. 48. Anonymus,

vide ante.

9. In an Action of Debt for 2001. upon the Statute of 2 Ed. 6. for Tithes of Land in the Parish of Rinston, alias Royston, the Defendant pleaded the Statute 31 H. 8. and that the Lands

were discharged in the Hands of the Prior of Mount-Bretton at the Time of the Dissolution, and Issue was join'd upon the Discharge: And upon a Trial at Bar, the Desendant not making good his Plea, the Court ruled the Value to be taken as confess'd, because the Issue is joined upon a collateral Point. And the Desendant took not the Value by Protestation, and so the Verdict was given for 2001. but neither Damages nor Costs. All. 88. Dame Bowles versus Breadhead. Tel. 126. Oliver versus Collins.

10. In an Assize, if the Tenant plead Nul disseifin, he cannot give in Evidence a Release after the Disseisin, but a Release before the Disseisin he may; for then there is no Disseisin upon the

Matter. Coke Lit. 283. a.

nent made to himself by J. S. a Stranger, by Deed bearing Date, &c. and the Plaintiff makes Title to himself, absq; boc, that J. S. enseoff'd the Desendant by the Deed; the Desendant may give in Evidence a Feoffment by another Deed, or without Deed, because the Issue is on the Feoffment, and not on the Deed. 4 Ed. 3. 1. contra 12 Ed. 4. 4. 2 Rol. Abr. 681. 3.

others, for erecting of two Houses at the West End of his Wind-mill, per quod ventus impeditur, &c. And it was given in Evidence, that the said Houses were situate about eighty Feet from the said Mill; and that in Height it did extend above the Top of the Mill, and in Length it was twelve Yards from the Mill; and notwithstanding this Nearness, the Court directed the Jury to find for the Desendant. And in that Evidence it appeared by a Deed produced by the Plaintiss himself, that his Wise was Jointenant with him; and there-

therefore it was holden by the Court, that the Affize brought in his Name alone was not well brought. Godb. 189. Goodman and Gore's Cafe.

13. In an Attaint, the Plaintiff shall not give more Evidence than he did in the first Action.

Drer 129. Pl. 65. Hidon versus Ibgrave, &c.

dant pleads, that the Husband had nothing but jointly with J. S. who is still living; the Demandant replied, that J. S. released his Right to her Husband, but she not having that Release, the Court directed the Demandant to plead, that he was seised of Lands, from which she might demand her Dower, and give the Release in Evi-

dence. 2 Bro. Gen. Iff. 48.

Abbot of C. granted a Corody and Pension of 81. per Annum, and Office of Porter to the said Abbey, to W. S. for the Term of his Life, who granted the same over to the Plaintiff, and the Deed also, and on non detinet pleaded, the Jury found that W. S. sold as above; but it was agreed among the Parties, that the Defendant should retain the Deed till 401. was paid, of which seven is paid, and the Rest remained unpaid; and it was resolved that Matter would have been a good Bar, but cannot be given in Evidence. Bro. Gen. Is.

16. Richard Atkins, of Lincoln's Inn, brought a Writ of Forger of false Faits against Hale of Gloucester, and counted upon the Forger of an Indenture, in quo continetur quod quidam Abbas Monasterii de Gloucester demisit situm Manerii de R. & terras Dominicales, &c. The Defendant pleaded Not guilty, and it was given in Evidence on the Plaintiff's Part, a Lease supposed to be made

and forged; containing that the said Abbot seased the said Site, and all the Demesne Lands of the said Manor, except is duobus separalibus Chausuris inde, &c. vocat', &c. And it was moved, if this Evidence doth not maintain the Issue; and it was holden by the whole Court that the Evidence was good enough; for it is not necessary to construe terras dominicales omnes terras Dominicales, for the Lands not excepted are Terrae Dominicales, for the Lands not excepted are Terrae Dominicales; and so the Count is satisfied by that Evidence: 1 Leon. 139. Atkins and Hale's Case.

17. Ejectione firma: The Plaintiff declared of an Ejectment of 100 Acres of Land, and shewed his Lease in Evidence only of 40 Acres; and it was said he had sailed of his Lease, for there was no such Lease, as that of which he did count. But it was ruled to be good, for so much as was comprised in his Lease; and for the Residue, the Jury may find the Desendant Non guilty. 1 Cros

13. Guy verfus Rand.

18. In an Ejectione firmæ by Cheney and his Wife against Smith: The Plaintiffs declared upon a Leafe made by the Master of the House of College of St. Thomas of Acons in London to 7. S. who affigned it over to Knevit, who by his Will devised the same to his Wife, whom he made alfo his Executrix and died, and afterwards the took to Husband one Waters and died; Waters took Letters of Administration of the Goods and Chartels of his Wife, and afterwards leafed to the Plaintiffs: And upon Not guilty they were at Iffue. And it was urged, that the Leafe given in Evidence, was not the Leafe whereof the Plaintiffs have declared; for the original Leafe shewed in Court is, Master of the House or Hospital, whereas the Lease specified in the Declaration is, Mafter of the House or College. 38 Ed. 3. 28.

And some of the Justices conceived that there is not any material Variance, (but if the Parties would, it might be found by Special Verdict) for by them College and Hospital are all one. And afterwards the Court moved the Plaintiff to prove. If the Wife were in as Executrix, or as Legatee; for by Anderson and Periam, Until Election be made, the shall not be faid to have it as Legaree. especially if it be not alledged in Fact, that all the Debts of the Testator are paid: And Anderfon doubted, although that it be alledged, that the Debts be paid, if the Executrix shall be faid to have the faid Lease as a Legacy, before the hath made Election. Vide Welden's Case and Paramour's in Plowden. And afterwards it was given in Evidence, that the Wife, after the Death of the Husband, had repaired the Banks of the Land, and produced Witnesses to prove it, as if the fame should amount to claim it as a Legacy; and the Court said, that that Matter should be referred to the Jury: And it was further shewed in Evidence, that the faid Wife, Executrix, and her faid Husband Waters, formerly made a Lease by Deed, reciting thereby, that whereas the Hufband was possessed in the Right of his said Wife, as Executrix of her first Husband, &c. And by the Opinion of the whole Court, the same was an express Claim as Executrix; and then when the Wife died, if the Husband would have Advantage of it, he ought to take Letters of Administration of the Goods of her first Husband, and not of the Wife; but if she had claimed the Land, and the Term in it as Legatee, and had not been in Possession. Administration taken of the Rights and Debts of the Wife, had been good as to that Intent, that his Wife was not actually possessed of t, but only had a Right unto it; and of fuch Things. 4-1m .

Things in Action, the Husband might be Executor or Administrator to his Wife; but here they have failed of their Title: The Administration being taken of the Goods of the Wife, where it should be of the Goods of the Testator the first Husband; and for this Cause the Plaintiffs were nonsuit. I Leon. 215. Cheney versus Smith.

19. In Ejectment the Plaintiff made Title by a Recovery in Dower, and produced in Evidence the Record of the Judgment, and the Haberi facias seisinam, &c. The Defendant offered to prove a Term of 99 Years subsisting, and that made prior to this Title: But it was disallowed; for if he had pleaded this in Bar of the Writ of Dower, yet the Plaintiff must have recovered with a ceffet Executio, and the Defendant had a proper Time to have pleaded it then, but has now flipped his Opportunity; also a chattel Interest was at Commmon Law bound by a Recovery in a real Action, fo that the Demandant had an immediate Execution without any Regard to the fubfifting Term. And tho' by the Statute of H. 8. A Termor may falfify a Recovery, &c. Yet it must be the Termor himself, and not another for him. Lady Dowager Lindsey versus Lord Lindsey,

20. In Ejectione firme, the Plaintiff declared upon a Lease made 14 fan. 30 Eliz. to have from the Feast of Christmas then last before, for three Years: And upon the Evidence, the Plaintiff shewed a Lease bearing Date 13 fan. the same Year, and it was proved by Witnesses, that the Lease was sealed and delivered upon the Land the 13th Day of fanuary; whereupon Puckering and Cowper, Serjeants, moved on the Part of the Defendant, that for that Variance between the Declaration and the Evidence of the Plaintiff, that

I Salk. 279.

the Jury might be discharged: But Anderson C. J. said, that the Evidence was good enough to maintain the Declaration; for if the Lease was sealed and delivered the 13th of Jan. it was then a Lease, 14 Jan. Quod cateri Justiciarii concesserunt.

4 Leon. 14. Frice versus Foster.

21. Ejectione firmæ, upon a Lease by Richard Blackalley and Christopher Blackalley, for three Years, of the entire Land: Upon Not guilty pleaded, the Case by the Evidence was discover'd to be fuch: Christopher and Richard Blackally, and one Waltham, Daughter to Richard, being Jointtenants for Years, Waltham lets her Part to Chri-Ropher. Afterwards Christopher and Richard join in this Leafe to the Plaintiff; and he declares upon a Joint-Lease by both; and whether this Declaration was good, was the Question? And Fleming Ch. Baron, (before whom it was tried by Nisi prius, in the County of Devon) over-ruled it, that the Declaration was well maintained by this Leafe; but notwithstanding, to fatisfy the Defendant's Counfel, caused the Case to be drawn up by the Counsel on both Sides, and that it should be moved to the Court of King's Bench, where the Case depended; and if they doubted thereof, then the Record should not be certified; and the Jury gave their Verdict according to his Opinion for the Plaintiff; and now this Matter was moved, and Popham and Fenner held, that this Leafe well warrants the Declaration: For upon the Matter, they both let the Entire; and upon this general Count it is good. But Telverton and Williams econtra, because the Conut supposed that both let the Entire, as Joint-tenants; for fo it is intended by the general Count, which appears to be false: For they two let two Parts jointly; and the one of them having a third Part,

as Tenant in Common, let that only, and so the Declaration ought to have shewn the Truth, and the especial Matter: And because it is difficult, they used in such Case to make a Lease, and the Lessee to make a second Lease, and the second Lessee to declare generally, and so all the Matter shall come in Evidence; wherefore adjornatur.

2 Croke 83. Jurdain versus Steere.

22. Ejectione firmæ of a Joint-lease by two; upon Not guilty, a Special Verdict was found, that the two Lessors were Tenants in Common; and whether he might declare of a Joint-lease or not was the Question? Fenner, Telverton and Tanfield held, that the Declaration was ill; for he ought to have declared upon several Leases of their several Parts: But Williams conceived it to be well enough. 2 Cro. 166. Mantle versus Wol-

lington.

23. Ejectione firma, for so many Acres of Meadow, and fo many Acres of Pasture; upon Not guilty pleaded, the Jury find a Demise de Herbagio & Pannagio of so many Acres. And the Question was, whether this Evidence did or did not maintain the Issue for the Plaintiff? It was moved that it did, because an Ejectment lies de Herbagio. Vide Reg. 227. and that this Evidence is for the Plaintiff. Cro. Eliz. 676. Spark's Case was cited; viz. That an Ejectione firmæ was but in the Nature of a Trespass, and Cro. Car. 362. So if a Leafe be found made by a Guardian or Copyholder, fuch a Leafe will maintain the Declaration, though their Leafes and Grants are void against the Lord and Infant; but the Court inclined against the Plaintiff: First, because by the same Reason that an Ejectment lies upon a Lease of Herbage, by the same Reason the Plaintiff ought to declare accordingly: As in the Case 27 H. 8. where

where Pasture is granted for ten Oxen, the Pracipe must run accordingly; and so here. Secondary, Herbage does not include all the Profits of the Soil but only Part of it; as Co. 1 Inst. fol. 4. b. Et adjornatur. Har. 330. Wheeler versus Toulson.

24. On Evidence to the Jury at a Trial at Bar in Ejectment, the Plaintiff's Title was a Lease for five thousand Years, which Lease was sealed and delivered in London; and the Counsel for the Defendant would have put the Plaintiff to prove an actual Entry by Virtue of that Lease for Lives, for it was agreed that the Rule to confess Lease, Entry and Ouster, did not extend to this Case; but per Cur', It shall be intended that he entred, until the contrary is proved. 2 Sid. 223. Langborn versus Merry.

25. On an Ejectment for a Rectory, and Not guilty pleaded, the Plaintiff's Evidence proved the Defendant took the Tithes, but could not prove that he ever entred on the Glebe Lands; and therefore the Plaintiff was nonfuit. Cited by Finch to be adjudged in Lat. 62. Hems v. Stroud, 1 Keb. 368. Berry v. Wheeler, S. C. 2 Sid. 91.

26. In Ejectment, the Defendant shall not give in Evidence a former Mortgage or Conveyance made by himself; and therefore in such Cases it is lest for him that has the former Mortgage to get himself made Defendant before the Cause comes

to Trial. T. per pais 193.

27. Entry and Claim made upon the Land within five Years after the Death of the Baron of the
Countess of Peterborough, to avoid a Fine, she being Issue in Tail, was proved by one Witness, and
allowed at a Trial at Bar. B. R. Mich. 15 Car. 2.
Lloyd versus Pollard. T. per pais 193.

jectment to try the Title, he must in Evidence shew the Elegit filed. T. per pais 191.

129. If one produce a Lease made upon an Outlawry, in Evidence to a Jury to prove the Title, the must also produce the Outlawry it self. T. per

pais 166.

30. In Ejectione firme upon Not guilty, upon Evidence to the Jury at the Bar, the Cafe was fuch, that Cotexuell had a Lease for Years of the Prebend of Sutton-Regis in the County of Bucks. made in the Time of H. 8. and being expired, he now claimed under a Leafe from a Nominal Prebendary thereof, founded in the Cathedral of Lincoln: But the Plaintiff claimed by Letters Patent thereof from King James, made the 7th of King Fames to Brent and his Heirs, who granted the same to the Widow of Sir W. Rawligh and her Heirs, whose Daughter and Heir Sir Gervase Elwaies married; and the Possession was according to this Grant; whereupon the Question was, If they ought to flew how it came to the Crown? Hale Ch. J. faid, that the Statute for Confirmation of Patents, Fac. takes Notice that Prebend did come to the King. And in Edward the First's Time was a Devise, that all that claimed Terra Regis should shew how it came to the Crown, which often vanished away, &c. In late Times, in a Trial at this Bar, Mr. Latch did nonfuit the Plaintiff upon a Claim of Monastery-Lands, although he proved the House had it, because he did not make out how it came to the House; but fince that Time, the Court have intended it well come to the House, the Possession having went accordingly with it: And he faid, he was of Counsel in a Trial at Bar for an Impropriation, where it was infifted, that it was Presentative till S 4 Edward

Edward the Fourth's Time, and could not be appropriated without the King's Licence; quod Cur' concessit; and he could not produce the Licence; yet because it was enjoyed ever since Edward the Fourth's Time as appropriate, the Court did intend a Licence, and that the Patent was lost before the Enrolment, and accordingly the Verdict went; then the Defendant offered to read a Copy of a Lease out of the Ledger-Book of the Dean and Chapter of Lincoln; but it was disallowed by the Court, for the Book it self is but a Copy; and a Copy of a Copy is no Evidence. And in this Case, the Court did presume the Grant to King James to be lost; and thereupon Judgment

was for the Plaintiff. T. per. pais 230.

31. In an Ejectment brought by the Lessee of Pride, on a Trial at Bar, in the King's Bench, before Holt Ch. J. and Giles Eyre, the Plaintiff entitled himself to the Lands in Question, as Heir to George, late Duke of Albemarle, by being Son to a Daughter of one Monk, elder Brother to the Duke, supposing the Duke died without Issue, the Defendant claimed under a Deed, and also under a Will of Christopher, Son to Duke George; to which the Plaintiff replied, that he was not Son to Duke George, but a Bastard; because at the Time Duke George married the Mother of the faid Christopher, she had a Husband then liying, and fo the Marriage was void; and the Plaintiff produced several Witnesses, who endeavoured to prove this Fact. To this the Counsel for the Defendant rejoined, that they ought not to be admitted to give Evidence to bastardize a Man that was dead, and after the Death of Father and Mother, who were married in the Year 1653, and cohabited together as Man and Wife continually to the Time of their Death, which was ten Years after

after: and Duke Christopher was acknowledged as Son and Heir to Duke George unto the Time of his Death, which was in 1668, and was called Son and Heir in the Settlement and Will of Duke George, and enjoy'd the Estate accordingly, and the Defendant under him by Settlement for above twenty Years, and Duke Christopher also fat in Parliament as Son and Heir to Duke George, and in a Patent made by King Charles II. was fo stiled, and in an Act of Parliament that passed to enable him to dispose of Lands that were settled on him as fuch, and therefore no Evidence shall be given to bastardize him here, especially, fince this Court will not permit the Ecclefiastical Courts to proceed in the like Cafe. But both the Judges were of Opinion, that if the Facts were true, the Marriage was null and void, and the Jury may find the Facts; and this Evidence was admitted. 3 Lev. 410. Pride versus Earl of Bath. Quære.

32. Ejectione firmæ of a Lease of Lucy Lady Griffin, the 7th of January, 19 Jac. by Indenture, dated the 6th of December, 19 Jac. babend' à die datus Indenturæ præd'; upon Not guilty pleaded, and Evidence to the Jury, the Lease was shewn bearing Date the 6th of December 19 Jac. and the Hebendum was à Tempore Confectionis Indentura. And because à die datus excludes the Day, so as it is not the same Lease whereof the Plaintiff declares, it was held that the Plaintiff had mistaken in his Action, whereof the Plaintiff was non-

fuited. 2 Cro. 647. Scavage versus Parker.

33. An Ejectione firmæ, and a Trial at Bar: The Plaintiff had declared of a Lease made to him by Baron and Feme, and that he being out of Pos-fession, they had made a Letter of Attorney to enter and deliver that Lease, and that they sealed and

and delivered it. And it was now ruled, that the Declaration is naught, because it is not the Lease of the Wise, but of the Husband only; and that so it hath been adjudg'd in one Riche's Case. And that the Letter of Attorney of the Wise is void, because it is only executory. And the Counsel for the Plaintist confessed that it had been adjudged accordingly. Noy 233 Phimer v. Hocket, S. C. 3 Cro. 165. said to be adjudged contra; but I believe it is a Mistake. Three other Books agree with the Report in Noy. Telv. 1. Wilson v. Riche, S. C. 1 Brown 134. 2 Cro. 617. Gardiner v. Norman.

34. On an Ejectment it appear'd that the Leffor deliver'd the Deed to his Servant unfealed, and without any Date, but a Blank was left for it; and by Parol commanded him to go and feal it on the Land, and to infert the Day that he entered and fealed it on, and the next Day that is the 28th, the Servant went to the Land, and there fealed the fame, and inferted the 28th Day into the Blank that was left, and the Lease was made for twenty-one Years from the Date thereof; and the Plaintiff declared on a Leafe made the 28th Day of Jan. and on Ejectment on the 29th; and therefore Lovelace said, that the Plaintiff ought to move an Entry after the Commencement of the Term, that is, on the 29th Day, or after; and it was faid, that if the Leafe be supposed by the Declaration to be made the 28th Day, if it was not fealed till the 29th, yet have they failed in their Proof, altho' the Deed fays it was made the 28th. Dyer faid, if the Lease is sealed on the Land after the Commencement of the Term; for Example the 29, and the Ejectment is alledged to have been the 30th; it is well enough, altho' the Lessee did not enter the 30th, but the Day before. Dal. 105. Covert versus Lennarde.

35. If

35. If an Ejectment be brought of twenty Acres, on a Lease of twenty Acres, if the Defendant plead Non ejecit; there, if he is found Guilty but in ten Acres, the Plaintiff shall recover: but he should not, if the Defendant had pleaded Non demisit. Per Manwood, If the Seal of a Bond be torn off and refixed again, the Obligee may plead Non est factum generally, and shew the Special Matter in Evidence, or plead a Special Non eft factum; per Soutboote and Wray. Dal. 105. Anonymus.

36. On an Ejectment, the Case was thus: A Man had feveral Closes, some Arable, some Pasture, and some Meadow, and he that claimed them entered into all, and made a Lease; after which some of the Defendant's Servants came with his Carts into one Close, nor was there any other Proof of an Ejectment; and on this Evidence, Crew, Ch. J. Doderidge and Jones, directed the Jury to find an Ejectment of the Whole. though the Plaintiff neither proved an actual Entry into the other Closes, or any Command of the Defendant's. Lat. 8. Caly versus Fisher.

37. It was ruled on a Trial at Bar, that if in a Declaration in Ejectment, the Lease is said to be dated after the first Day of Michaelmas Term, and the Declaration is of the same Term which relates to the first Day; it is Matter of Evidence, and what Day the Bill was filed may be proved on the Trial; for if it were in Fact filed after the Day of the Leafe, it is well enough. Sid. 432.

Prodger's Cafe.

38. Ejectione firmæ, the Plaintiff declared of a Lease by 7. S. The Defendant said, that long Time before the Lease and Ejectment, that the Queen was seised of the Land, and let it to B. for Years, who let it unto the Defendant for two Years,

Years, upon whom 7. S. the Lessor of the Plaintiff entered and expulsed him, and let it to the Plaintiff; and upon this it was demurred, because the Plea amounts to Not guilty. Gawdy: The Plea is good; but if it had been in the Cafe of a common Person, it had not been good, without faying he ousted the Lessee, and diffeised the Lessor; but here there can be no Disseisin to the Queen; wherefore he faith enough, that he put out the Lessee; for otherwise it is not good, 10 Ed. 4. 6. for otherwise his Entry may be intended lawful; but when he faith he expulsed him, this intendeth an unlawful Entry, and confesseth in him such a Possession, that he may make a good Lease against any but him that hath Right. Fenner agreed; and by this Entry he hath gained fuch a Possession, that the Lessee of the Queen may bring an Ejectione firmæ, although the Queen be not put out of the Freehold; which Popham agreed. I Cro. 331. Lee versus Norris.

39. In Ejectione firmæ, it was held upon Evidence by the Court, that if a Fine be levied, and an Indenture to lead the Use of it be sealed and delivered afterwards; this is not sufficient to lead the Use of the Fine, except it be averred and proved, that the Conusor intended, before the Fine levied, to levy it to this Use: Quære. 1 Cro. 218. Foster versus Fountaine.

40. In an Ejectment, Matter of Estoppel was given in Evidence, and the Counsel of the Party said it was adjudged, that the Jury was bound to take Notice of it under Pain of Attaint; and Wray, Ch. J. said, that the Judgment was against

Law. Mo. 96. Pledall versus Pledall.

41. In an Ejectment of Lands in Kent, it was agreed, that if Land be alledged to be in Kent, it shall

shall be presumed to be Gavelkind Land, if the contrary is not proved; but that the special Customs incident to Gavelkind ought to be proved; as that the Husband shall be Tenant by the Curtesy, without having Issue, &c. 1 Sid.

153. Brown versus Brokes.

42. A Woman, in an Ejectment brought against her, pleads a Custom in the Manor, that the Widow of every Copyholder in Fee-simple, Fee-tail, or for Life, should enjoy the Copyhold for Term of her Life, and the Custom was traversed; and on Evidence at Nisi prius to maintain the Custom, they proved she claimed the Estate only during her Widowhood; and on this Evidence the Plaintiff demurred; and it was adjudged by the Court, that this Evidence did not maintain the Custom pleaded; for the Evidence was of an Estate only during her Widowhood; and the Custom pleaded was for the Estate during her Life; which is a greater Estate. Dy. 192. Pl. 23.

Lynsey versus Dixon.

43. Upon a Trial at Bar by an Effex Jury, in an Action of Trespass and Ejectment, upon Non culp. pleaded, the Matter arising upon the Issue, which was as touching the Custom of a Copyhold Manor; whether the Copyholders upon their Admittances have used to pay Fines uncertain, at the Will of the Lord, or Fines certain (S.) the Value of two Years Rent, and no more? To prove the Fines to be uncertain, the Plaintiff did shew forth divers Court-Rolls of Admittances upon Surrender, and that the Fines taken by the Lord were not certain, but sometimes fuch a Sum, and fometimes another Sum, but always under the Value of two Years Rent, and none above this. Williams, Justice, and the whole Court; (absente Fleming, Ch. J.) To prove a

Custom for Uncertainty of Fines, and not to be certain two Years Rent, there ought to be shew? ed Court-Rolls, and that in Cases of Descents: and that upon such Admittances they have used to pay for Fines above two Years Rent. But Rolls: To prove Uncertainty of Fines, (though in Cases of Descents;) if the Fines be under the Value of two Years Rent, these are no Proof at all, for the Fines ought to be above two Years Rent; for it is a good Custom to pay for Fines upon Admittances, the Value of two Years Rent. or under, and the Proofs ought to be in Cases of Descent; for in case of a Surrender, or a Purchase of a Copyhold, the Lord may take what Fine he will; but fuch Fines are no Proof to prove the Taking of uncertain Fines by the Custom, but the same ought to be in Cases of Defcent: And as to the Case alledged to prove Fines uncertain, upon a Descent, where a Copyholder furrendred to the Use of a Widow for her Life, the Remainder to the Use of his Son in Tail, and dies, the Son was admitted, and paid for his Fine above the Value of two Years Rent; in this Case, the Son is not in as by Descent, but by Purchase, and so was the Opinion of the whole Court; and fo the Plaintiff perceiving the Opinion of the Court to be against him, became nonsuit. 2 Bull. 32. Allen versus Abraham.

44. Upon a Trial at Bar: A Deed of Bargain and Sale acknowledged by the Bargainee, and enrolled, by which a Term for Years was affigned, was given in Evidence, without any Proof made of the Bargainor's Sealing and Delivery thereof; and after Debate it was allowed by Holt, Ch. J. Eyre, Just. and the whole Court; for the Acknowledgment of the Party in a Court of Record, or before a Master extraordinary in the

the Country (as this was) is good Evidence of its being sealed and delivered; and such an Acknowledgment estops a Man from pleading Non est sature. Also Enrolments of Deeds on the Statute are admitted every Day in Evidence without Witnesses of the Sealing and Delivery; and it is the Acknowledgment which gives it Credit, and not its Operation or Contents; and they also held, That a sworn Copy of a Deed inrolled was good Evidence. Smartle versus Williams, I Salk. 281.

45. In an Ejectione firmæ brought by the Leffee of a Copyholder, it is sufficient that the Count be general, without any Mention of the Licence; and if the Defendant plead Not guilty, then the Plaintiff ought to shew the Licence in Evidence: But if the Defendant plead Special, then the Plaintiff ought to plead the Licence certainly in his Replication, and the Time and Place when it was made. 2 Bro. 40. Petty versus Evans.

46. Pope brings a Replevin against Skinner, who avows the Taking as a Commoner, because the Plaintiff's Beafts were Damage-feafant: In April, 11 fac. the Plaintiff in Bar fays, that one Williams was seised of an House and Land, &c. whereto he had Common, and demifed the same unto him the 30th of March in the same eleven Years, to hold from the Feast of the Annunciation next before, for a Year: The Avowant traverseth the Lease modo & forma; whereupon Issue was taken, and the Jury faid, that Williams made a Lease to the Plaintiff on the 25th Day of March, for one Year from thence next enfuing: And though this be not the same Lease that the Plaintiff pleaded, (for this begins on the Day, and the other begins not fo foon) nor was to take

his Limitation but from the Day excluded, yet the Court gave Judgment for the Plaintiff: For the Substance of Issue is, Whether the Plaintiff have fuch a Lease or no from Williams? as by Force thereof he might Common at the Time, which appeared for him in this Case, and the Modo & forma in the rest is not material; yet it must not altogether depart from the Form of this Issue, for had it been found that he had Right of Common by a Lease from another, or as an Owner, it would not have ferved his Turn, for that had been clear out of the Issue, both in Matter and Form. Yet it was granted, that if he had declared in Ejectione firmæ thus, it would have been against him clearly, for there he demands and recovers the Term, and therefore must make his Title truly. Note; That in this Case, the Jury might have found directly against the Plaintiff non dimisit modo & forma, and could not fafely have found a General Verdict for the Plaintiff; fo that the Judgment of Law upon the Verdict is in manner against the Verdict. Hob. 72. Pope verfus Skinner.

47. Replevin. The Parties being at Issue upon a Prescription, to have Common in certain Land called Stitch-Hall in Comitat' Warw. it was held by Anderson, Walmsley, and Beamond (absente Owen) who deliver'd their Opinion so to the Jury; That where one prescribes to have Common appurtenant to his House, and twenty Acres of Land, and it appears upon the Evidence, that he hath but eighteen Acres, or a lesser Parcel, yet he hath not failed of his Prescription. But if he had twenty Acres, and ten Acres are Freehold, and the other Copyhold, he there fails of his Prescription; for he cannot make a Prescription for both. So it is, if it appears upon the Evidence,

that Part of the Land was Copyhold a hundred Years fince, but now it is Freehold. 1 Cro. 531.

Gregory versus Hill.

48. In a Replevin, the Taking was supposed to be in a Place called Kelftornlyng, and the Defendant fays, that the faid Place contains 200 Acres of Pasture, which are and by Prescription have been Parcel of the Manor of Kelstorn (and omits naming the County in which the Manor lay) which Manor is and was folum & liberum Tenementum of the Defendant, and avows the Taking of the Cattle Damage-feafant; the Plaintiff in Bar to the Avowry pleads, that the Place where is Parcel of the Manor of Kelftorn in Kelftorn aforesaid, and conveys a Title to himself, and traverfeth its being the Avowant's Freehold, and Issue was taken on the Traverse; and at Nift prius, the Plaintiff gave in Evidence, that there was no Manor of Kelstorn, and consequently the 200 Acres could not be Parcel of it; and by the Opinion of the whole Court, this Evidence was adjudged repugnant to the Plaintiff's own Traverse. Dy. 183. Pl. 58. Anonymus.

49. In a Replevin, the Parties were at Issue upon the Property, and it was found for the Plaintiff, and Damages entire were assessed; and not for the Taking by it self, and for the Value of the Cattle by themselves, for the Judgment upon that is absolute, and not conditional; and also, if the Plaintiff had the Cattle, the Defendant might have given the same in Evidence to the Jury, and then they would have assessed Damages accordingly, viz. but for the Taking.

Godb. 98. Anonymus.

50. The Plaintiff in a Writ of Waste declared on a Lease made to the Defendant by 7. S. which 7. S. had granted the Reversion to him in Fee,

and that the Defendant attorn'd; it was doubted, whether if the Defendant pleaded Ne granta pas per le fait, or Riens paffa per le fait, whether he might give in Evidence that he never attorn'd Tenant to the Plaintiff? And Shelly was of Opinion he could not, but that he ought to plead that he did not attorn; but Kneighty and Fitzherbert were of Opinion, that the Defendant might. Dy. 31. Pl. 215.

Defendant pleaded no Waste, and gave in Evidence that the Houses were sufficiently repair'd before the Writ purchased: And per Cur', This Evidence is not good, but this ought to have been pleaded specially, because by the Evidence, the Defendant does acknowledge there was once

a Waste. Dy. 276. Pl. 151. Anonymus.

52. Waste was affigned in Boscis, viz. in succidendo & vendendo 10 Quercus, and the Truth was, he had only lopp'd the Oaks; and it was agreed he may safely plead Nul Waste, and give this special Matter in Evidence. Dy. 92. Pl. 16. Ano-

nymus.

53. Waste was affigned in fodiendo fossam in quodam prato. The Defendant pleaded no Waste; and it was found by Special Verdict, that the Defendant dug a Trench to carry off the Water, by which the Ground was better'd. It was insisted on by the Plaintiff's Counsel, that this ought to have been pleaded specially, and could not be given in Evidence: But per Cur', it may. Dy. 361. Pl. 12. Altman versus—

54. In an Action of Waste, upon the Plea Nul Wast fait, he may give in Evidence any Thing that proveth it no Waste, as by Tempest, by Lightning, by Enemies, and the like; but he cannot give in Evidence justifiable Waste, as to repair

repair the House, or the like; if one doth Waste, and before the Action brought, the Lessee repaireth it? and after the Lesser bringeth an Action of Waste, and the Lessee plead Quod non featit Vastum, he cannot give in Evidence the speat

cial Matter. Co. Lit. 283. a.

55. The Question being, Whether the Manor of Sherfeild was by Custom descendable to the eldest Daughter? The Plaintiff for Evidence, to prove this Custom, shewed, that it was Parcel of the Manor of Odiham, which is antient Demesn? In which Manor the Custom is, That Lands are descendable to the eldest Daughter. But on the other Part was shewn, that it cannot be Parcel of the Manor of Odiham, because it appears by divers Records that this Manor of Sherfeild was held of the King by Grand Sergeanty: And although it was agreed on both Parts, that there is fuch a Custom within the Manor and Vill of Odiham : yet forafmuch as it holds by fuch Service, and every Tenure of that Manor is of it felf, it cannot be Parcel of the Manor of Odibam. But to that was answer'd, That this Tenure in Grand Sergeanty was erected by King Edward II. and now was an antient Tenure; and if here were fuch an antient Custom, it cannot be destroyed nor altered by Alteration of the Tenure; which was agreed by all the Justices. Whereupon, because divers Precedents were shewn, that Lands of the Freeholders used to descend there to the eldest Daughter, and Lands in Sherfeild used to be recovered by a Writ of Right Close, in the Court there; it was left to the Jury to inquire, whether there was any fuch Custom? And because the Jurors lying all Night could not agree, a Juror by Consent was drawn. 3 Cro. 4846 Moulin versus Sir George Dalfon. \$6. If

56. If a Man have two Manors of D. and levy a Fine of the Manor of D. Circumstances may be given in Evidence, to prove which Manor he intended. 2 Rol. Abr. 676. Pl. 12.

37. In Evidence to a Jury it was held, That Proclamations, whereby the Lord claimed Forfeiture, ought to be proved viva voce, and not only by the Court-Rolls. 1 Keb. 287. Pateson

against Danges.

58. In Evidence to a Jury, it was held by the Court, That a voluntary Conveyance executed is not fraudulent, because voluntary; but it is great Evidence of Fraud against an After-Conveyance made bona fide, because the Statute avoids such Deeds as are bona fide, and on Consideration, if made ea intentione to defraud Purchasers: And therefore this Fraud must be found by the Jury. I Keb. 486. Garth versus Mois.

59. Nota; In the Case of Jay and Rider, as it was told me, Wyndbam said, That Contract by Trustee to take a new Lease, is present Surrender of the old Lease of Cestur que Trust, being by his Assent; which Foster and Twisden doubted; but all agreed such Contract to be good Evidence to a Jury of a Surrender; and it was so found

by Verdict. 1 Keb. 285. Anonymus.

CHAP. XII.

Of Evidence in Pleas of the Crown. See before Chap. 1, 2.

T. Vidence against the Honour of a Peer of the Realm, who gives Evidence for the King, thereby to render him incredible, as to make him an Atheist, &c. not admitted. Hamb. Try. 37, 38.

2. Printed Trials not allowed to be cited for Evidence. 7ef. Try. 45. Langborn's Try. 17, 50.

3. Hearfay, or a Report of what another Man faid, is no Evidence against a Prisoner. Lang. Try. 24. Lord Russ. Try. 48. Vide ante.

4. A Copy of a Record in the Lord's House would not be admitted to be given in Evidence at Langhorn's Trial, (p. 44.) nor was he allowed to prove by Witnesses what Oats had affirmed in Relation to him at another Trial. Lang. Try. 45, 49.

5. The Journal of the House of Commons is no Evidence, because they have no Power to give an Oath; but the Proceedings of the House of Peers are Evidence, because that is a Court o Record. By Jefferies Ch. J. Oats, 1 Try. 55.

6. If a Witnels be sworn to a particular Thing, and speak to another Matter which he was not sworn to give an Account of, this can never be Evidence. By Jeff. Ch. Just. Oats, 1 Try. 16.

7. Hearfay is admitted for Evidence where it is to establish another Witness's Testimony; as where a second swears that he heard the first Witness declare the same Thing formerly. Oats, I Try. 70.

T 3 8. Where

8. Where two Facts are alledged against the fame Man, and it be questioned whether it be the same Man, it is sufficient that it is reported; and this is good Evidence, unless some one else of the same Name be produced. Oats, 2 Try. 15.

9. By Jefferies, Ch. J. Though in strictness we don't use to admit of what others have sworn at another Trial, unless the Party be dead that fwore it; yet the Prisoner is sometimes indulged fo far as to be admitted to prove it. 2 Try. 40.

10. Evidence may be given in Treason, to shew the Temper of the Prisoner's Spirit, and how his Inclination hath been all along; though that be not the Thing for which he is directly

called in Question. Rouse's Try. 69, 70.

11. Hearfay from others is not to be applied immediately to the Prisoner; however those Matters that are remote at first, may ferve to prove there was a general Conspiracy to destroy the King and Government; and so was the constant Rule and Method about the Popish Plot, first to produce Evidence of the Plot in general. By Ch. J. Sidn. Try. 56.

12. A Witness shall not give Evidence of what he has heard another fay, (For Hearfay Evidence is not to be admitted, except as No 7. supra.) See State Try. 1 Vol. 689, 777. 4 Vol. 26, 38. 3 Vol. 129, 159, 162. Yet fee Vol. 1. 216 and 306. The Acts and Speeches of others admitted as Evidence against a Prisoner. (Sed quære Legem?)

13. No Witness shall be admitted to prove what another had formerly faid in Evidence, though that Party be now difabled to come into Court himself. Hamb. Try. 31.

14. The Opinion of a Third Party against the King's Witness, on Behalf of the Prisoner at the Is if & To Busse, the war to

Bar,

Bar, not admitted as Evidence; as to prove that the Lord E. had no good Opinion of the Lord H. who gave Evidence against Mr. H. makes nothing for Mr. H. Hamb. Try. 36.

15. It is not regular to produce any Evidence.

without first opening it. Rookwood's Try. 63.

16. By the late Act for regulating Trials in Cases of Treason, 7 W. 3. c. 3. no Evidence is to be admitted of any Overt-Act, that is not exprefly laid in the Indictment; but it does not exclude Evidence in order to prove an Overt-Act laid, tho' fuch Evidence be not laid. Rookwood's Try. 74. vide ante.

17. The Prisoner and his Counsel have been heard in the midst of fumming up the Evidence by the Court, to rectify a Mistake. Rookwood's

Try. 71.

18. No Observations ought to be made upon the Prisoner's Evidence, till he hath concluded to give all his Evidence, admitted for good Practice

in Lord Mobun's Try. 33, 36.

19. To prove a Hand-writing by Similitude, and by those who have known the Hand, though the Party was not feen to write it, was allowed fufficient Proof of a treasonable Writing in Sidney's Case; for this is said to be as much Proof as the Thing is capable of, especially where the Writing is found in his Possession. Sidn. Try. 51. Yet Sidney faid, it had been declared in the Lady Carr's Case to be no lawful Evidence in Criminal Caufes. Sidn. Try. 32.

20. Charnock was indicted, for that he on the noth of Feb. 9 W. 3. and at divers other Days and Times, as well before as afterwards, in the Parish of St. C. D. did traiterously conspire to kill the King. And by Holt, Ch. J. Evidence may be given of a treasonable Conspiracy, &c. at any Time

Time before or after the Time laid in the Indictment: 1st, Because 'tis only Circumstance and of Form; some Day must be alledged; but it is not material (what Day). 2dly, Here the Indictment lays it to be at divers Days and Times before and after, which comprehends as well what was done the last Year as this. And as Evidence may be of Matter before the Time laid, so it may be of Matters done after that Time, provided it be not after the Time the Indictment was found: Neither is the Indictment tied up to the Place, for it may be laid of any Place, provided it be not out of the County: And so it is of all criminal Cases. Charnock's Case, I Salk.

288. See Charnock's Trial, fol. 19, &c.

21. Indictment, That the Defendant, with others, at the Parish of St. Giles in the Fields, riotously assembled, and a certain Chamber of one Sarab S. in the Dwelling-house of one David Fames, did break and enter, and thirty Yards of woollen Stuff, &c. did take and carry away; and on Evidence it appeared to be the House of David Jameson, and not James: And Parker, Ch. J. held, that this did not maintain the Indictment, as in 2 Rol. 677. Trespass for breaking his Close in Calvering, in quodam loco vocat. Calverfield, abutting South on a Mill in the Tenure of 7. S. The Plaintiff must prove the whole Abutment, even its being in the Tenure of 7. S. (Q. if not over nice?) He also cited the Case of the Queen and Sudbury, on an Indictment for Assault and Battery laid as a Riot; Two were acquitted and Two found guilty, and all were acquitted; for the Crime was the Riot, and the whole Charge alledged under that Specification and Description (Q. if this be to the Point). So in the Case of the Play-house; Indictment for acting a Play and the real will be and

and speaking obscene Words, in such a Parish, in a Play-house in Lincolns-Inn Fields: If there be no Play-house in Lincolns-Inn Fields, the Defendant must be acquitted; for the' Words are not (properly) local, yet these are made so; as one may make a Trespass local that is not so. If the Speaking had been alledged in Lincolns-Inn Fields, then it had been laid as a Venue; but here it is otherwise, for here it is alledged as a Description where the Play-house stood. And in the Principal Cafe, part is local and part is not local; the Cubiculum (Chamber) is local, the taking and carrying away is not local. But then all is put together as one entire Fact under one Description, and you cannot divide them. (Quære The Force or Fraud of this Way of Reasoning? For the Principal Point ought to govern its Adjuncts, and the Principal here being the Breaking of the Chamber of S. S. whether it were in the House of James or Jameson, seems not material.) The Queen versus Carnage, 1 Salk. 385.

by Imposing upon him a Quantity of Beer mixed with Vinegar, and the Grounds of Coffee, for Port Wine; one of the Defendants pretending to be a Broker, and the other a Portugueze Merchant, for the better carrying on of the Cheat. And by Holt Ch. J. The Party so imposed on was himself admitted a Witness to prove the Fact upon the Trial. For in such private Transactions no Body else can be a Witness of the Circumstances of the Fact but he that suffers. The Queen against Mackartney, and others, I Salk.

286.

23. And yet Holt, Ch. Just. seemed to be of a different Opinion in the Case of the King and Whiting, 1 Salk. 283. Where an Information being

being against the Defendant for a Cheat; and on the Trial the Fact appearing to be, that he had a Promise of a Note for 51. from his Mother-in-Law, and that by some Slight or Trick he had got her Hand to a Note for 100%. Here the Chief Justice held, That the Mother could not be a Witness, she being concerned in the Consequence of the Suit; and if her Evidence were admitted, it might be a Means to discharge her of the 100 l. For tho' the Verdict on this Informacion cannot be given in Evidence in an Action on the Note for the 100 l. yet we are fure to hear of it to influence the Jury: And he faid he could not diftinguish this from the Cases of Perjury or Forgery, where the Party whose Interest is defeated or prejudiced by the Deed, &c. is no Evidence to prove the Perjury or Forgery. But notwithstanding this Opinion of Holt, to me it feems, that the Case here rather resembles that of Fraud precedent, where Holt seems to be of a different Opinion. And note; in Cases of Usury, if the Money is repaid, or of Extortion, &c. the Party injured is always allow'd to be a Witness. Q. See I Salk. 289. Anonymus. Where the Son took the Father's Money, and gave it to, or fpent it on A. and the Son was admitted a Witness to prove it ; in Trover.

the Plaintiff set forth, That he bought of the Defendant several Parcels of Silk for Baladine Silk, and that the Defendant sold it to him for Baladine Silk; whereas it was another Kind of Silk; and on the Trial, on Not guilty, it appeared there was no actual Deceit in the Defendant, who was the Merchant, but that it was in the Factor beyond Sea. And 'twas doubted if this Deceit of the Factor should charge the Merchant? And

And Holt Ch. Just, held, That the Merchant was answerable, tho' not Criminaliter, yet Civiliter; for feeing some Body must be a Loser by this Deceit, it is more Reason that he, who imploys and puts a Trust and Confidence in the Deceiver, should be the Loser, than a Stranger. And the Plaintiff had his Verdict. Hern versus Nichols. set en ana municipal en la anti-

I Salk. 289.

25. See the Case of Midleton versus Fowler & al', I Salk. 282. where it was held by Holt, Ch. Just. at Nisi prius, That the Master of a Stage-Coach was not chargeable for Goods loft by the Driver, unless the Master takes a Price for the Carriage of Goods as well as for Persons; and tho' the Money be given to the Driver, yet that is as a Gratuity, and cannot bring the Master within the Custom; for no Master is chargeable with the Acts of his Servant, but when he acts in Execution of the Authority given by the Master. (Quære de boc?) And then the Act of the Servant is the Act of the Master.

26. If a Man stand charged with the same Crime with the Prisoner, though he be not convicted, his Evidence on the Behalf of the Prisoner

is of little Weight. 5 Fes. Try. 73.

27. Lord Ch. J. Jefferies would not admit a Witness to swear that he was forsworn at a former Trial; for he that has once for fworn himself. ought not to be a Witness after that in any Case what foever. Qats's Try. 68.

28. Langborn desired that he might examine fome of his Witnesses after the King's Counsel had done; but he was then told, he might then fay what he would for his Defence, but not examine any new Witnesses. Langborn's Try. 47.

29. Witnesses may be examin'd to give an Account of the general Tenour of the Conversation of a Witness against a Prisoner, but not of parti-

cular Crimes. Rookwood's Try. 64, 65.

30. By North, Ch. J. The Prisoner must have Liberty to ask Questions while the Evidence is giving, because there is some Questions that else might be forgotten, and the Opportunity will be loft; but when he bath asked those Questions, he is to make his own Observations upon them in private to himself, and afterwards it will be Time for him to argue upon it when the King's Counsel have done their Evidence; before, it will do him little Service, and cannot be permitted. Wakeman's Try. 19.

31. Fofeph Clark was indicted in London for High Treason for Coining of Money; and upon the Evidence it was proved against him in London, as it ought to be, the Indictment being there: But a great deal of more Evidence was given against him of committing the same Crime in Middlesex and Effex; which was agreed to be

good Evidence. Kel. 33.

32. First, In Cases of Felony, by Stat. 1 8 2 Ph. & Mar. c. 13. and 2 & 3 Ph. & Mar. c. 10. the Justice hath Power to examine the Offender and Informer. 2dly, The Examination of the Offender not upon Oath, but subscribed by him. 3dly, Examination of others must be upon Oath. Athly, This must be certified by the Justices, 1. If it be but a small Felony, to the Sessions; 2. If it be a great Felony, &c. to the next Gaol-Delivery. Stbly, These Examinations, if the Party be dead or absent, may be given in Evidence; but Prudence to have the Justice or his Clerk fworn to the Truth of the Examination. 6thly, But Examinations, taken upon a Cause of Divorce for a forcible Marriage, not allowed to be read upon

an Indictment upon 3 H. 7. for the same Marriage. H. P. C. 263.

33. The Examination of an Infant of Thirteen, nay, of Nine, has been allowed in fome

Cafes. H. P. C. 264.

34. In an Information for a Libel against the Government, Not guilty being pleaded upon the Trial, the Attorney General offered in Evidence Depositions taken before a Justice relating to the Fact, the Deponent being since dead; and per Cur', upon Advice with the Justices of C. B. In Cases of Felony, such Depositions before a Justice, if the Party die, may be used, by the Stat. 1 & 2 Pb. & Mar. c. 13. But this cannot be extended farther than the particular Case of Felony, and therefore not to this Case. The King against Paine, 1 Salk. 281. vide pag. 98.

35. If the Indictment differ in specie mortis, then it maintains it not: As Indictment of Poisoning, Evidence of Stabbing maintains it not: But if the Indictment be of poisoning with one Kind of Poison, and the Evidence of another; or of killing with a Dagger, and the Evidence is of killing with a Staff; yet it maintains the Indictment, for it agrees in Substance and Kind. H. P. G. Ibid.

36. The like of Accessories before, though the Poison or Weapon different. Indictment, that A. gave the mortal Blow, and B. C. and D. were Presentes & Abettantes, yet it maintains the In-

dictment. H. P. C. Ibid.

37. Indictment of A. as accessory to B. and C. Evidence proves him accessory only to B. maintains the Indictment. H. P. C. Ibid.

38. Indictment of Murder ex malitia pracogitata, Evidence of Malice in Law; as killing an Officer, or without Provocation, yet maintains the Indictment. H. P. C. Ibid.

39. Indictment upon the Statute of Stabbing, 21 Jac. Evidence that the Dead struck first, yet Evidence to maintain the Indictment for Man-slaughter generally. H. 23 Car. Horwood's Case. H. P. C. 266.

40. Two indicted as Principals; Evidence proves one Accessary before, he shall be dis-

charged of that Indictment. H. P. C. 266.

41. A Mother endeavouring to conceal the Death of her Bastard-Child, shall suffer Death as in case of Murder; unless she prove by one Witness, that the Child was born dead. H. P. C. 266.

42. One Burgess being outlawed upon an Indictment of Manslaughter in the County of Middlesex, brought a Writ of Error to reverse the Outlawry; and affigned for Error, that he was over the Seas at the Time of the Outlawry, viz. at Utrecht in partibus transmarinis. Hereupon Counsel being appointed for the Prisoner to plead, and the Error affigned, the King's Attorney takes Isfue, that he was here in Middlesex at the Time of the Outlawry, and traverfeth his Being at Utrecht, prout: Whereupon Issue being joined, and a Jury of Middlesex at the Bar, the first Day of this Term, Calthorp being affigned of Counfel. for the Prisoner, for Assignment of Error, offer'd in Evidence a Certificate under the Seal of the faid Town. Jones, Justice, moved it as doubtful, whether he might have Counfel upon his Trial? But all the other Justices held clearly, that he shall have it when the Trial is not on the Act laid in the Indictment, but upon collateral Matter, (namely, of his being beyond Seas.) And all the Justices held, that it is not material in what Place beyond Sea he was, fo as he was over the Seas; and that the Certificate under the Seal of the Town where he was resident, without Oath of the Truth

Truth thereof, and one fworn for the Exposition of it in English, is not allowable; but a Witness being sworn, said certainly that he was there in Service at the Time of the Outlawry, and before: Whereupon the Jury gave their Verdict accordly; and then he was instantly arraigned upon the Indictment, and pleaded. 3 Cro. 365. Burgess's Case.

43. Indictment was for Battery upon Doctor R. and the Evidence was, That the Defendant did spit in his Face. Per Holt, Ch. J. It is a Battery. And per ipsum, Though one cannot justify a Battery by son Assault Demesse, by pleading it to an Indictment, yet he may give it in Evidence upon Not guilty, and he may be thereupon acquitted. 6 Mod. 172. Dom' Reg' versus Cotesworth.

44. Bockman was Indicted for striking one Harlstone in Westminster-Hall, whilst the Courts were sitting. On the Trial the Desendant offer'd to prove, that H. one of the Evidences for the Crown, had offer'd to compound with them to take a Sum of Money; but the Court would not permit such Evidence to be given to lessen the Credit of the Witness; for they said that it shall be intended as a Composition for the Battery, and not for the Indictment, which was not in the Party's Power to compound. 2 Sid. 211. Rev versus Bocknam.

45. Bigland excepted to an Indictment of Cottager, in regard he had a Licence of the Lord, and a Continuance by the Sessions; but per Cur', They would not quash it for this Cause, but ordered him to plead and give this Matter in Evidence. 2 Keb. 503. The King versus Hutchins.

46. On an Indictment for not coming to Church, the Jury would not find the Bill, un-less it were proved that the Party was at no o-

bas Su

ther Church. But per Curiam, This was an Offence, and such Negatives are needless; nor, by Wyndbam, is it necessary to swear the Party was not at his Parish Church, but that on diligent Search he could not see him there, and that is sufficient to put the Affirmative to be proved by the Party indicted; which the Court also agreed. I Keb. 740. King versus City of Norwich and Dioc.

47. In an Information exhibited by the Attorney General for the King; after Evidence is given, if the Jury are agreed on their Verdict, and the Attorney declares he will proceed no further, but defires, as he may, that a Juror may be drawn; and it is accordingly done, and fo no Verdict is given, on a new Informaion brought by the Attorney for the King: None of the first Jury shall be admitted on the new Trial, to give Evidence that they were agreed to have found a Verdict for the Defendant, because by the same Reason that it ought not to be publish'd against the King in the first Information, it ought not in the Second; for if it should, the King would have no Benefit by his withdrawing a Juror, by his Prerogative, in the first Information, P. 16 Car. B. R. Roberts and Sir Simon Harcourt; and it was faid to be the Practice, by Judge Jones, and Banks Attorney General; otherwise, where a Title between private Persons is in Question, which does not concern the King. 2 Rol. Abr. 679, 10. & 680, 11.

48. If an Information or Action is brought on a Penal Statute, and there is another Statute which exempts the Party from the Penalty; if he plead the General Issue, he cannot give the last Statute in Evidence, altho' it be in the Nature of a Proviso; for it not being in the same Act which gives the Penalty, it ought to be pleaded.

pleaded. Mich. 15 Car. B. R. per Jones. 2 Roti

Abr. 683. Pl. 13.

48. In an Information on the Statute 5 Ed. 6. for Ingroffing; if the Defendant plead the General Issue, he cannot give in Evidence a Licence according to the Proviso in the Statute P. 12 Faci B. Pye versus Boyer. And this was said to be the constant Course of the Exchequer. 2 Rol. Abri

683. Pl. 11.

N. 3 38 36 1 20 1

49. An Information was exhibited against one for Perjury; fetting forth, that the Bill in Chancery was exhibited by one A: B. and the Proceedings thereupon; and the Perjury was affigned in a Deposition made by the Defendant the 30th of July 1683, and taken in that Caufe before Commissioners in the Country. It was tried at the Bar, and the Question was, Whether the Return of the Commissioners, that the Defendant made Oath before them, shall be a sufficient Evidence to convict him of Perjury, without their being present in Court, to prove him the very same Person? Serj. Pemberton admitted an Information will lie in this Case against him, but the Commissioners must be here, or some other Person, to prove that he was the Person that made the Oath before them: The Commissioners do sign Deposi tions, and they ought to produce them fo figned to the Court, and prove it; for Depositions are often suppressed by Order of the Court. If a true Copy of an Affidavit made before the Ch. J. of this Court, be produced at a Trial, it is not sufficient to convict a Man of Perjury. This is not like the Case of Perjury assigned in an Anfwer in Chancery taken in the Country, for that is under the Party's Hand; but here is nothing under the Defendant's Hand, and therefore the Commissioners ought to be in the Court to prove him

WILL!

him to be the Man. The Court were equally divided: The Ch. J. and Wythens Justice, were of Opinion, that it was not Evidence to convict the Defendant of Perjury; it might have been otherwife upon the Return of a Master in Chancery. for he is upon his Oath, and is therefore prefumed to make a good Return: But Commissioners are not upon Oath, they pen the Depositions according to the best of their Skill, and a Man may call himself by another Name before them. without any Offence. The Commissioners cannot be mistaken in the Oath, though they may not know the Person; for this Court may be so mistaken in those who make Affidavits here, but not in the Oath; if the Commissioners, or Clerk to the Commissioners, had been here, they would have been good Evidence. If an Affidavit be made before a Justice of Peace, of a Robbery, as enjoined by the Statute, if you will convict the Person of Perjury, you must prove the Swearing of the Affidavit. The Attorney General perceiving the Opinion of the Court, rather than the Plaintiff fhould be nonfuit, because no Evidence could be given, offer'd to enter a Nolle prosequi, which the Court faid could not be done, because the Jury were fworn; but he infifted upon it, and faid he would cause it to be entered. 3 Mod. 116. Anonymus.

C. B. made before the Commissioners in the Country, in a certain Cause depending there, was tried before Eyre, and convicted; and several Exceptions arising upon the Evidence, he stopped the Postea, till the Opinion of the Court was had upon Motion. The Proof of a Cause depending was only a Capias, and Warrant thereon, and Assidavit filed and allowed. I urged another Exception, that there was no Proof that the Party (besore

missioner, and held that it need not, unless you disprove it on the other Side: That the Proof was only by Copy of an Assidavit, and no Proof that it was the Defendant's. I urged that this is a dangerous Practice; any Man might be represented; a salse Oath may be sworn by another Man in my Name: And per Cur', the Assidavit being of the Desendant in the Cause and used by him, upon Motion in Court, it is enough, otherwise if not so; but a Copy of an Assidavit only produced against a Man, without Proof that he made it, used it, or was concerned in the Cause, that would be insufficient; Judgment pro Reger

Show. 397. Dominus Rex versus James.

gr. An Information was against the Defendant for making a false Return to a Mandamus, commanding him to proceed to the Election of a Town-Clerk for the Corporation, in the Room of one Bulbell. To which he returned, That before the Arrival of the Writ, 7. S. had been duly chose and sworn into the faid Office; and it appeared on Evidence, that the Right of Election was in thirty Common-council-men; that the Mayor at fuch a Time, before the Arrival of the Writ, had fummoned them to meet in order to the Election; and that twenty-eight met, and three Candidates were fet up; that two of the Twenty-eight voted for one, that thirteen voted for another, and the Mayor and Twelve voted for the Third; that the Mayor pretending to have a casting Voice, declared his Man duly elected, and at another Court swore him in. And the following Points were in this Case ruled by Holf Ch. J. at Nisi prius. 1. That there needs no more Evidence to prove this Return to be the Mayor's, but the Copy of the Writ and the Return thereof in the Crown-Office. 2. That tho' upon Confultation the Majority be against him, and make a Return in his Name, yet it shall be taken to be his, if he does not come and disayow it. 3. That it is not necessary to prove a Delivery of the Writ to the Mayor, no more than to a Sheriff in a false Return against him. 4. That notwithstanding the Writ is to be delivered to the Mayor as the most visible Part of the Corporation. 5. That this Action for a false Return may be brought against the whole Corporation, or against any Particular Member of it. 6. That the Mayor, or other Head Officer of common Right has no casting Voice; but such a Thing may be by particular Constitution, as by Prescription or Charter. 7. If there be an Equality of Votes, and therefore they cannot chuse, upon Mandamus they must agree, or else they shall be all brought up as in Contempt, and laid by the Heels till they do agree; for after a Jury is fworn, they shall be impounded till they all agree; but here it suffices that a Majority do agree: And the Mayor was found Guilty. 6 Mod. 152. Dom' Reg' v. Chapman.

View of a certain Way in the Parish out of Repair: The Defendant traverses it generally non cul. Jury finds Special Verdict, that it was no common Highway, but that it was out of Repair. Mr. Darnel for the Parish argued, that this being found to be no Highway, makes it to be a void Presentment, because it is a limited Jurisdiction. Jones 355. Then, supposing it were an Indictment, yet this might be given in Evidence upon Not guilty; and cited 10 H. 6. 16. Trespass for breaking and entering a Warren; No Warren is an ill Plea, because it amounts to the General Issue. Holt Ch. J. You may traverse, but

but that is only by Virtue of a particular Claufe in the Statute; but the Quere is, If when you plead Not guilty, you do not admit it to be a good Prefentment, and that it was an Highway? A Parish, who is to repair of common Right, cannot plead Not guilty, and give in Evidence, that another ought to Repair, but they must plead it specially; for on Not guilty, you shall not throw it off on another; as was held by Hale, in the Case of Leather-Lane: But if a particular Perfon be indicted for not repairing where he is bound thereto Ratione Tenura, there, upon Not guilty, he may give any Thing in Evidence. Upon an Indictment of a Parish for an Highway, if found not an Highway, it is Not guilty, as in the Cafe of Hampstead for Green-lane; but in Case of a Presentment, it goes in Avoidance of the Justices Turifdiction, which this Plea doth admit. Eyre: It his Part of his Presentment that they ought to Repair, and then furely they may give it in Evidence as a Discharge. This Case was moved again. Holt: The Being of an Highway is Matter of Supposal, and must be denied in Pleading, and fo held in the Case of Leather-lane. Eyre: You may give it in Evidence, for it is the fame with No Park or Warren. In Trespass, it is. Not guilty; the Presentment is but in Nature of an Indictment. Per Cur', ordered to Stay. Show. 270 & 291. Rex and the Inhabitants of Hornfey.

53. Note; In the Case of Thurston versus Slatford, I Salk. 284. a Record of Sessions was admitted as Evidence to prove the Plaintiff had not taken the Oaths; and fo his Office void, viz. Case was brought in C. B. upon Indebitatus assumpfit, for 51. received to the Plaintiff's Use, being Fees of the Office of Clerk of the Peace of Ox-

U 3

ford (bire:

fordsbire: And on Non assumpsit 'twas infifted, that the Plaintiff had forfeited his Office, by not qualifying himfelf according to Law. They shewed that he was admitted to the Office in April, and produced the Record of the Seffions, to prove that he had not taken the Oaths; the Plaintiff offered a Bill of Exceptions to this Evidence, which was brought into B. R. with the Record by Writ of Error; And Holt Ch. J. faid, That if a Judge, admits that for Evidence which is not, the other Side cannot demur for that Cause; but must tender a Bill of Exceptions. But he held, that this Record was Evidence: That indeed, if there be a Mis-entry, it might be supplied and corrected by other Evidence; for the Party shall not be concluded by the Mistake, or Negligence of the Officer; but still it is a Record and some Proof, tho' not a compleat Proof, and might be left to the Jury. He remember'd a Case where the Univerfity of Oxford entitled themselves to a Presentation, by a Conviction of the Earl of Shrewsbury, for Recufancy; and upon giving some Evidence that the Record was loft, the University was permitted to prove the Effect of it by other Evidence.

and other work is a married to the state of the state of

What I bridged that I I that it consensual a dw

is terre on Proce than are rest of eden. or west with the state of the state of the state of 11.

1 M (DES)

- margarita i marata de la THE timal desirance and the district formation of the state o



that he was commedicated Offician April, and brothered the Record of the Selftons, to prove

vier himlest according to have They theweck

Non affument twee infiled.

A Fare dence which is note the cine

Phe hall not raken the Oarlis, the Planning

dent bled on 100 marting policy of bell the scord was Ity dent. That indeed, if there

Batement. See Jointenancy, Plea. 1 Trespass, Trover and Conversion. Mill.

It is a good Plea in Trover, brought by one as Administrator on the Possession of the Deceafed, that he made a Will, Page 191, Cafe 25 Ahsence.

For feven Years of the Person on whose Life an Estate depends is sufficient Evidence of his p. 7, 8, &c. c. 21 Death Abuttals.

How they ought to be prov'd p. 234, c. 33, 34, 35,36

Accessozp. Vide Indiament, Information. What Evidence shall be sufficient to convict them, and what not p. 285, c. 36, 37, and 286, c. 40, and 285, c. 36

Account. See Confession, Declaration, Insimul Computaffet, Mil Debet, Piene Administravit.

Before the Ordinary shall not be given in Evidence on Plene Administravit pleaded p. 132, C. IIO

Adion.

On the Statute of Winton, one who hath Lands in the Hundred, and don't inhabit, may be a Witness Page 72, c. 57, and 73, c. 58
On the Statute of Winton may be brought, tho' the Party do not follow the Thieves after having made Hue and Cry p. 11, c. 3
Whether the Party, Plaintiff, may be a Witness to prove Delivery of Money to his Servant
who was robbed, because it may be proved by others p. 53, c. 8. 54, c. 9
Inhabitant, tho' he pays no Taxes, is no Witness
Almsmen may be Witnesses for the Hundred, in an Action on the Statute of Winchester p. 73,
20 Administrator. See Mot guilty, Executor. To prove one so, it is sufficient to produce the Book of the Ecclesiastical Court p. 107, c. 47
In Trover by Administrator on the Intestate's Possession; Defendant cannot give in Evidence a Will on the General Issue; aliter if on the Administrator's own Possession p. 134,
Affidavít.
Made voluntary before a Master in Chancery, whether it is Evidence p. 103, c. 31, and 127, c. 92
Almanack. Vide Day.
It is good Evidence to prove the Day of the Week p. 132, c. 104
Answer. See Exemplification, Depositions,
In an English Court is good Evidence against the Desendant himself, not against others p. 110,
con a bobied the miles of and an octo c. 57

Of Feoffee in Trust refused to	
Of Guardian shall not be read	
In Chancery, which is prejudicia	
may be given in Evidence ag	
against his Alience	p. 109, c. 32
In Chancery, not Evidence at Lav	
or against a third Person	
Appeal. Vide Indiament.	
What is not good Evidence in one	p. 33, c. 66
Appzentice.	o by others
Vide the Statutes for stamping App	rentices Inden-
tures, in order to be given in	
the Avitaities Considered andress. In	YAND Men Indy
Appzopziation.	an Adron
	p. 93, c. 18
Affault.	Hallinma D
To lay one's Hand on one's Swore	is one . but if
the Party say, Were it not Affiz	
tell you more; it is none	
To punch one with his Elbow i	
course, without any Intent of	ibid.
none	
Assumplit. See Consideration	
Damages, Declaration,	
putasset, Inquiry, Mon Ass	umput, naute,
Payment, Plene Administra	init, Pasounie,
Quantum Meruit, Statute Writ.	, Suviniuion,
The Plaintiff may give in Evidence	e Matter of Pa-
rol-Contract, but not Specialty	
When it may be maintain'd by E	vidence of Ser-
vice done voluntarily	p. 166, c. 19
vice done voluntarily Assumptit intra fer Annos. Vid	e Replication.
Evidence of an Acknowledgment i	s not conclusive
para desirante de la companya della companya de la companya della	p. 175, c. 51

But an Acknowledgment is Evidence of a Pro-Page 175, Cafe 53 mile The Original need not be given in Evidence p. 175, Evidence of Promise to the Executor on Declaration on Promise of the Testator, though that was within fix Years, is not good p. 175, c. 53 Whether Evidence of a Renewal of the Promife by one, on Declaration on a Promise by four, is good p. 176, c.54 On Issue Non assumpsit, Infancy or Payment may be given in Evidence p. 161, 162, C. 4. Attachment. Vide Officer. Against an Officer for Arresting one come to give Evidence p. 29, c. 47, 48 Attainder. See Challenge, Confession, Pirate, Witness. A Writ of Attaint disables one from being an Evidence p. 42, c. 13 No Evidence necessary on passing a Bill of Attaint p. 17, c. 13 Averment. Vide Debt. If laid in a Declaration on a Promise of a greater Sum than is necessary, yet must be proved p. 173, c. 47 Augmentation. How it shall be proved p. 134, C. 112 Award. Vide Submission.

Bail. Vide Consent.

May be sworn by Consent p. 80, c. 76

Baronage. Vide Books, Pedigree.

Of England, by Dugdale, is no Evidence of a Pedigree p. 118, c. 74

HINTING.

Batttery.

Battery. See Indiame	mt & Plea.
What is one	Page 287, Cafe 43
Better. Better.	Tart coul bat is in
May give Evidence of This Wager, when he hath pa	ngs that relate to the
knowledged he loft, but	c. 70
Bill. Vide Exemplifica	ition.
In Chancery when it may	be given in Evidence
p. 109,	c. 55, and 110, c. 56
Books. See Baronage,	
An ancient one, in which w	ere Entries of Leafes.
feems to be good Evide	ence where the Party
cannot produce better	p. 135, c. 115
Of the East-India Company	
ced at a Trial	p. 139, c. 120
Of a Merchant are Evidence	e against, but not for
him	p. 135, c. 113
An ancient one in the H	erald's Office allowed
A Duaman's Dook Council has	p. 135, c. 114
A Brewer's Book figned by	
dead, admitted to prove	
otherwise of a Shop-boo	-
THE SECTION AND ASSESSMENT	p. 136, c. 116
A Shop-book admitted as E	
the Servant's Hand who	
Boundaries. See India	p. 136, c. 117
Boundaries. See India	tment. Warifhioner.
Parfon, & Prefumpt	ion.
If made by Commission fro	om Chancery and ac-
quiesced under, shall be	prefumed infly made
quieteca anaci, man oc	
Stulle of Dones Wide	P. 127, C. 93
Bulls of Popes. Vide	Crembunration:
May be exemplified	p. 89, c. 16
17 5 871 5	Garage S

Sat Miles

Burning in the hand. See King, Stigmaticks, Witness.
Part of the Judgment in an Appeal Page 1,

Case 12, and 46, c. 4

By-Law, Usage is good Evidence of one p. 197, c. 37

C.

Carrier. Vide Cale. Cafe. Vide Carrier.

Was brought for a Rescue, and the Party rescued fworn p. 49, c. 28

A Master of a Stage-Coach is liable for Goods lost by his Driver, if he takes a Price for his Carriage p. 283, c. 25

Certificates.

Mentioning or not mentioning Land to have belonged to a Priory, is good Evidence they did or did not p. 140, c. 123

Under the Seal of the Town where one was refident, when it shall be allowed for Evidence p. 286, c. 42

Where 'twas held no Evidence p. 5, c. 13 In Latin, from foreign Courts of Admiralty, good

Evidence p. 6, c. 15

Of Clerk of Affize and Peace, good Evidence of a Prisoner's being convicted and order'd to be Transported p. 28, c. 43

Challenge. Vide Attainder.

To a Juror it is a good one that he was attaint of Felony p. 39, c. 11

Thurth-book. Vide Books.

Admitted as Evidence to prove Nonage p. 107,

Claim. Vide Entry.

Clerk.

The TABLE:

Attendant on the Grand Jury, cannot be com- pell'd to be a Witness unto what passed there
Page 83, Cafe 85
Offences concerning the same, to be punished as they were Punishable before 1 E. 6. p. 20, c. 23, and 24, c. 32
Commissioners. Vide General Issue.
For the Trial of Prisoners may be sworn against
the Prisoners p. 17, c. 10 When sworn against a Prisoner, during his Trial, act not as Judges p. 17, c. 10
Of Bankrupts may plead the General Issue, and give the Special Matter in Evidence p. 148,
C. 13
In the Marshal's Book, whether sufficient Evidence in an Action for an Escape p.193, c. 28 Common.
What Evidence is good on Prescription p. 272,
Concealment.
Of a Bastard-Child when and how punish'd p.286,
C. 41
Confession. Vide Account, Attainder, Er- amination, Pirate.
Against whom in Criminal Cases it may be given
in Evidence p. 24, 25, c. 34 Must be in Treason or Proof thereof by two
Witnesses p. 39, c. 20, 21, and 26, c. 41
Before Privy Councellor (not Justice of Peace)
good Of one attainted of Piracy shall not be received
to Weaken his former Evidence p. 50, c. 30
Of as much due as was demanded, is good Evi-
dence of an Account p. 171, c. 39

100	I A D L L.
Is to be taken ent	ire and not piece-meal Page 6
Company of the second	Cafe 1
Without Proof of	Dealing, or at least a Probability
of it, is the we	orft Sort of Evidence p. 6, c. 18
Consent. See 2	
	not strictly Evidence may be
made so by it	p. 121, c. 85
Consideration.	See Mumplit, Dote & Re
cital.	form act to a valid stavenie in the
	ft be proved p. 161, c. 1, p. 248,
an an zijjampja ina	
	249, c. 1, and 251, c. 2.
Conspiracy.	
To levy War is	Evidence of Compassing the
King's Death	p. 22, c. 25
Cantinuanna.	Vide Damage, Crespals.
What Evidence m	ust be given to recover Dama-
ges for the Co	ntinuance of a Trespass p. 224,
	here c. 3.
Convertion. See	Denial, Demand & Trober.
If a Miller grind (Corn taken by Trespass, after
	is one p. 184, c. 10
Shall be intended	tho' no Denial proved, if the
Dian be intended,	cho no Demai proved, ii the
Party tortiouil	y take Goods p. 183, c. 9
Riding another's H	orfe, tho' in the Owner's Close,
is one	p. 185, c. 12
Conviction.	Automorphism of the second control of
	om Judgment by the Death of
of Terjuly Kept II	is no Evidence either to disable
or disparage th	e Party p. 43, 44, c. 17, 18
Coparceners.	Vide Jointenancy.
Canp. Vide C	ounterpart, Deed, Record,
Retainer.	
	the Steward's Hands, is good
Evidence	p. 140, c. 124
	e Language the Original is in,
and must contain	n as much at least as relates to
the Point in Qu	_3
	Of

Of Conviction before Commissioners of Excise, good Evidence without producing the Excise-book
Page 126, Cafe 89
Of Affidavit taken before Commissioners, good E- vidence to prove Persury p. 126, c. 89
A fworn Copy of a Deed inrolled, good Evidence
Of a Record may be given in Evidence p. 85, c. 5
Of a private Act, must be sworn to be examined with that Parliament - Roll before it is read p. 89, c. 12, 13, and 89, c. 14
Of Court-Roll under the Steward's Hand, the
Roll being lost, if Proof is there was such a Roll, is good Evidence as to the Copyholder's
Estate but not to prove a Recovery p.g. c. 20
Of Part of a long Patent, whether good Evi- dence p. 101, c. 28
Of Retainer entred in the Court of Faculties, rejected p. 141, c. 129
Of a Deed, when it is, and when it is not Evi-
dence p. 103, c. 32, and 109, c. 53 Of the Counterpart of a Leafe that is lost, good Evidence p. 107, c. 49
If never examined with the Original whether it is
good Evidence p. 22, c. 30, p. 108, c. 51, and
109, c. 54
Of the Pope's Bull is not Evidence p. 139, c. 122
Of a Record in the House of Lords p. 277, c. 4
Of an Agreement in Holland attested by a publick Notary, good Evidence p. 6, c. 16
Of a Conviction of Perjury in Oliver's Time, not
allowed to be given in Evidence p. 44, c. 18
In Actions brought by or against one, whether
one of the Corporation may be sworn p. 67,
c. 43, 45, p. 68, c. 47, 48, p. 69, c. 49, 50,
p. 70, c. 51, and 71, c. 52
Coverture.

Covertire. See Allumplit, Debt, & Dont eft Fadum. In Debt on Bond may be pleaded or given in Evi-Page 145, Cafe 6 dence. Counsel. Are not bound to disclose their Clients Secrets p. 82, c. 82, 83 Counterpart. See Copy, Deed, Fine. Of an antient Leafe found among Evidences of Land is good Evidence, tho' no subscribing Witnesses to it p. 107, c. 47 Of an antient Deed with other Circumstances is good Evidence, but not of it felf p. 107, c. 47 Of a Deed to lead the Uses of a Fine is of it self good Evidence p. 107, c. 48 Court. Vide Judne. Cannot hinder the Reading of a Deed p.104, c. 36 Cuffom. Of Gleaning must be pleaded, and cannot be given in Evidence p. 232, c. 30 Incident to Gavel-Kind must be proved in Ejectp. 268, c. 41 ment D. Damage. See Affumplit, Continuando, Delivery, Mot quilty & Office. May be fufficiently proved in an Assumpsit for the Profits of an Office, by shewing the Value of the Place communibus Annis p. 167, c. 23 Day. See Almanack, Replication, Solvit ad diem, Trespals. Is not material in Trefpass, provided it were done before the Action brought p. 224, c. 2 Death. Of Cestuy que vie shall be presumed after seven Years living beyond Sea, if evident Proof can't

be made of his Life p. 8, c. 21

Debt.

Debt. See Averment, Coverture, Declaration, Inquiry, Mil Debet, Mon Assumpsit, Plea, Plene Administravit, Payment, Record, Solvit ad diem.

Will not lie on a Record removed from Wales

Page 89, Case 16

Declaration. Vide Account, Assumpsit, Debt, Ejeameut, Entry, Executor, Iointenancy, Tenancy in Common, Trespass, Trover.

On a Robbery of 101. de denar' ipsius Quer', and the Evidence was, that the Plaintiff was Receiver to the L. R. and that it was her Money, good

p. 51, c. 5

For refcuing Goods distrained, if the Plaintiff lay a Seisin in Fee in himself, he must prove it

p. 197, c. 38

which

In Trover by Executor on the Possession of the Intestate, he need not prove himself Executor p. 191, c. 25

Otherwise if he had brought it on his own Possession p. 191, c. 25

On the common Custom against an Inn-keeper;
Evidence that the Goods were lost in the Inn,
but that the Guest went to Bed there only by
the Sufferance of another, without the Assent
of the Inn-keeper or his Servants, and not
good
p. 191, c. 26

Against a common Carrier; Evidence that the Plaintiff delivered the Box to the Carrier's Porter, whom he appointed to receive Goods for him, and told the Porter there was a Book and Tobacco in the Box, and in Truth there was 100 l. besides, and good p. 192, c. 27

In Case for diverting an antient Watercourse, Evidence that the Defendant had put a Leaden Pipe in the antient Watercourse, by

which the Water came to his own and good Page 196, C	
For fraudulently felling a Horse as his own, he knew to be another's; the Plaintiff mul	which
the Defendant knew it to be his p. 196	, c. 33
For executing an illegal Warrant, the July Peace his Commission need not be pr	
By Jointenants for disturbing them in a	
a Church; Evidence, that they were I	
For rescuing Goods distrained; the Leafe se in the Declaration made no Mention	
Warning; that proved in Evidence was a Quarter's Warning, and good p. 197	s with
In Debt, if the Plaintiff vary from the Co	ntract,
p. 171, c. 37, and 20 In Debt, Evidence of Goods fold to the V	o, c. 3
	I, C. 4
prove an Agreement for the Price p. 20 In Trespass de clauso fracto, &	2, c. 7
tho' no particular Kind of Common yet the Species must be given in Ex	in it
In Ejectment on Leafe by the Master	5, c. 8
House or College, whether Evidence Lease by the Master of the House or	of a
tal be good p. 257	Charles Trade To Control of the Cont
On a Lease the 14th Day of January, dence of one on the 13th is good p.259	
On a Lease as Jointenants, whether main by Evidence of their being Tenants in	tained Com-
For so many Acres of Meadow, so many	
of Pasture, whether Evidence of a Le Herbagio & Pannagio be good p. 261,	
	On

On Ejectment of a Rectory is not maintain's without Evidence of Entry into the Gleb Page 262, Case 2
In Ejectment on Lease babend' à die datus is no maintain'd by a Lease of the same Date with a Habend' a Tempore Confectionis p. 265. c. 32
On Lease by Baron and Feme is not maintained by Evidence of Lease delivered by Virtue of
a Letter of Attorney from both p. 265, c. 33 For Trespass supposed to be the 27th of August. Evidence that the Plaintiff was entitled to the Goods by Marriage the Day after, and ill
In Trespass, unless the Fact arises ex Turpi Causa, no Evidence shall be given of any Facts that
On Promise to deliver a certain Number of Broad Cloaths generally Evidence that so many were to be of one, so many of another Colour, and
on an Indebitatus, whether it can be maintained
by Evidence of a Sale, and no Price agreed p. 167, c. 21 To pay on Request cannot be maintained by Evi-
Time of the Contract, though the Time is past p. 170, c. 36
If the Plaintiff vary one Penny from the Contract fet forth in the Declaration on an Infimul Computasset, it is ill p. 176, C. 30 putasset, it is ill p. 171, C. 37
Evidence of a Writing sealed, testifying the Debt in Insimul Computasset, and ill p. 171, c. 38
On Assumptit to deliver Diftress taken for Rent arrear, the Plaintiff must prove there was Rent arrear p. 173, c. 45
On an absolute Promise, is not maintained by E- vidence of a Promise sub modo p. 172, c. 41
On Promise to pay in Consideration of Forbear-

ing a Suit for 80 L cannot be maintained by Evidence of the Forbearance of a Suit for	r
401. Page 172, Cale 4	2
On Promise not to sue, cannot be maintained by	V
. Evidence of a Promise in Consideration he'	
forbear his Suit p. 172, c. 4	3
To forbear to enforce the Evidence on an Issu	*
joined is maintained by Evidence of Forbear	-
ing in two Issues. p. 172, c. 4	4
ing in two Issues. p. 172, c. 4 On Promise by a Citizen to give his Daughter	a
Child's Portion, the Custom of the City,	ie
Cinia s Fortion, the Cultom of the City,	0
good Evidence p. 174, c. 4	0
For Words coram A. B. & alios, Evidence of the	T
being spoke before others is sufficient p.179, c.	I
Quare Defendens Crimen Feloniæ ei imposuit, Word	İs
alone will not maintain it, but some Act mus	
be given in Evidence p. 179, c.	
For a malicious Indictment, Evidence that th	
Defendant, as Justice of the Peace, procur's	
fome Witnesses to appear against the Plaintiff	
and that his Name was endorfed on the In	-
dictment, and not good p. 179, c.	3
In Case for malicious Indicting, the Plaintiff must	ň
prove the Bill was found by the Oath of th	0
Defendant of which his Name on the hea	1-
Defendant, of which his Name on the bac	
Side of the Indictment is sufficient Evidence	
p. 180, c.	4
Secondly, A Felony committed ibid	i.
For a malicious Indictment, whether Evidence of	
a Nolle Profequi by the Attorney General	
good p. 181, c.	
For a malicious Indicament may be maintain'd b	y
Evidence of the Attorney General confession	g
the Defendant's Plea of Not guilty to b	e
true 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	
Detree. de replied von der beilger de vabre	
In Equity, whether it is good Evidence in Cour	.+
of Common Law a series of Common Law	6
of Common Law p. 127, c. 94, 95, 9	

Deed. See Confent, Copy, Counterpart, pand-witing, Incolment, Insperimus, Interlineation, De granta pas, Mon eff Fadum, Ralure, Recital. By Confent may be given in Evidence, tho' not Page 105, Cafe 39 proved If antient, when it is good Evidence, though it cannot be prov'd, and no Seal is on it p. 105, c. 40, 42, 43, and 2, c. 3 To prove the Sealing, &c. and not know the Party, is not good p. 105, c. 41 If the Contrary is not prov'd, shall be presum'd to be deliver'd the Day of the Date p. 106 c.44 Cancell'd by Accident is nevertheless good p. 106, May be proved by Comparison of Hand and Seal, when the Witnesses are dead p. 2, c. 3 Tho' by the Fabrick it appears design'd for a Feoffment, yet if it express a sufficient Confideration, it may operate by Way of Use p. 102, c. 30 That begins This Indenture, tho' in Truth it be none, yet it may operate as a Deed-Poll p.102, 103, C. 30 Not to be allowed in Evidence before Stampt p. 160, c. 28 Destroyed, when they may be proved by Witness, when not p. 104, c. 34, 35, and 106, c. 45, and 108, c. 52 To lead the Uses of a Fine fur concessit, need not be proved per Testes p. 105, c. 38 Were frequently in Queen Elizabeth's Time without subscribing Witnesses p. 107, c. 47 De injuria sua propria. Vide General Istue, Son affault, Trefpals. May be replied to any Justification by Virtue of the Commission of Sewers p. 247, c. 65

113362

	W IADDE.
Delivery. s leafe. Wit	ee Damage, Deed, Plea, Re- nelles.
	Demand is good Evidence to mi-
	ges Page 185, Cafe 12
	ufficiently prov'd by shewing that
	gave the Obligee, faying, This
will ferve	p. 208, c. 27
To prove the C	bligor cast it on the Table is not
	vidence of it p. 208, c. 26
Of an Award to	o the Wife is fufficient Evidence
	ward was to be delivered to the
Party	p. 221, c. 71
	o the Party's Son p. 221. c. 72
Demand. V	ide Convertion, Request, Cro-
Of Satisfaction	for the Thing is good of a Con-
	р. 183, с. 8
	ds of B. who took them from C.
	n of Trover and Conversion a-
	them, Demand must be proved to
	A. and not to B. p. 184, c. 10
the second secon	Vide General Islue.
	for the Plea's amounting to the
	p. 146, c. 9, and 147, c. 11, and
Cotton of Description	143, C. 3
Denial. See	Conversion, Trover.
	version, or only Evidence of one
	6, and 183, c. 7, and 185, c. 12
	put to Pasture by B. to the Per-
	them of B. is good Evidence
	ion p. 184. c. 11
	orkman's Tools, tho the Defen-
	re was a Usage in the Queen's
	in Workmen's Tools to enforce
	k, is a Conversion p. 185, c. 12
	Evidence to prove a Conversion
	ty comes by the Goods by Tro-
ver	p. 182, c. 6, and 183, c. 7
129 C 124 W 17	Dona

Deposition. See Answer, Erempli Cramination, Indiament & Ju	fications,
Taken in Temporal Courts, when the	
read as Evidence Page 110, Cafe 9	
c. 62, and 113, c. 63, and 114, c. 6	
115, c. 69, 70, 71, and 116, c. 73	The second secon
Made in Ecclesiastical Courts, whether	Rvidence
When they may be read in Criminal Ca	120, 0.00
c. 82, 83, and 121, c. 84, and 119	c. 78 and
	125, c. 88
Not read in the Exchequer, not allow	ved to be
read in dom' Procerum	p. 3. c. 4
Vide contra another Case there cited	
Of Witness going beyond Sea, canno	
if he may be produced p	25, C. 37
Court will not order the Deposition of	The second of the second of the second
before a Justice of Peace, to be pro	duced for
a Prisoner against the King p.	32, c. 62
Contra p.	32, c. 63
In Chancery de bene effe taken before An	iwer, and
after the Party was in Contempt,	
read in Evidence at Law, between	
Parties or those deriving under the	
Witness be dead; aliter not p.123,12.	4, c.86,87
Depositions of a Witness shall not be re	ad where
the Inheritance afterwards descend	s to him
en ladræ af he out in Silve p. 124,	125, c. 87
Depositions before a Justice, if the Depositions	
may be Evidence in Felony, but in	
elfe p. 125. c. 88, and	
Depositions taken before Commissioner	
cife, shall not be given in Evidence	
missioners of Appeals, when the Wit	
living p. 125,	26. c. 80
Before Commissioners in Chancery, not	fufficient
e a le bus de a X 4	Evidence

Evidence to convict one of Perjury Page 126, In Spiritual Court no Evidence at Law p. 130, Dutels. Vide Plea. De on nevigiod son as At D. pleaded to Debt on Bond, the Plaintiff shall not be admitted to give in Evidence that the Defendant never was at D. for the Place is not material p. 221, c. 69 Who may prove it p. 61. c. 23 office officer and the see E. S. Giedment. See Declaration, Elegit, Mon ejecit, Mot guilty, Dutlaway & Patron. For Land originally in the Crown, whether the Plaintiff must shew how they came out of the p. 263, c. 30 Crown Declaration of a Lease 14 Jan. 30 Eliz. a Lease made 13 7an. 30 Eliz. may be given in Evidence p. 259, c. 20 Elenit. Vide Gieament. If the Plaintiff's Title is under it must be produced in Ejectment p. 263, c. 28 Entry. See Declaration, Trefpals. Claim of Entry to prevent the Statute of Limitations must be on the Land, unless good Reason contra p. 169, c. 32 What good Evidence of it p. 141, c. 127 Into every Parcel must be proved in Trespass to recover the mean Profits p. 225, c. 9 Entry and Sufpention. Vide Plea, May be pleaded or given in Evidence p. 144, c. 5 Escape. See Committitut, Fresh Suit, In-fozmation, Pul Escape, Plea, Refusal. In an Action for one fresh Suit shall not be given in Evidence p. 221, c. 73 On mean Process, the Plaintiff must prove there emminelias of the spanished was

was a Debt, and the Process	
Ebivence. Vide Dote, Ple	
Cannot be given to a Jury of w	hat is or what
ought to be opened before it is offer. That don't prove the particular Fayet if introductory to it, may p. 278, c. 10, 11,	act in Question,
Which the Jury have, may be f Knowledge of the Facts, of of the Witnesses, and sometime p. 3, c.	rom there own the Characters es by the View
Shall not be pleaded Ought to be given to the Jury, Court p. 3, c.	p. 4, c. 8 and not to the
Who shall give Evidence first p	. 4, c. 9, and 5,
None shall be given after a privy V Spiritual Acts and Things done in	a foreign Coun-
	p. 5, c. 13 p. 1, c. 1
The feveral Kinds of Evidences	
Why given Jury shall give a Verdict, tho' no	
Shall only be of the Fact	
Is divided into Evidence Viva voc and Mortua by Deeds and Wr	
Whether what one of the Witness was not on his Oath is good	
Where a printed History, Chronic Herald's Book, Parish-Register printed Trial, printed Proclan	eles, Year-book, es,Council-book, nation, Journals
of the House of Lords or Co Addresses, printed Acts of	Parliament are
4	good

good Evidence, and where not Page 84, 85 Case 1, 2, 3, 4, and 136, c. 116
Sentence of the Spiritual Court in a Cause within their Jurisdiction, is conducive Evidence in
the Part tried; contra of a collateral Matter
Proceedings in the Spiritual Court no Evidence at Law, where the Title of Land is in Que-
Where Defendant may plead the general Issue, and
give the Special Matter in Evidence p.143, c. r
Where the Evidence shall be local, and where the Action is laid, and where not p. 145, c. 7
Jointenancy, Tenancy in Common or Coparcener- ships, is good Evidence on the General Issue
Where the Plaintiff goes upon the Credit of di-
vers Partners, the Act of one Partner is Evi- dence against the others, except they shew
fome Disclaimer p. 145, 146, c. 8 In Ejectment the Plaintiff makes Title by a Re-
covery in Dower, the Defendant not admit- ted to prove a Term for Years prior to the
Title of Dower (1 Salk. 291.) p. 259, c. 19
An Indenture of Bargain and Sale inrolled may be given in Evidence, without proving the
Deceir of a Factor beyond Sea in Evidence to charge the Merchant here in an Action of
Deceit p. 282, 283, c. 24
Where it may be given after the Profecutor has replied p. 4. c. 7
Such Evidence of Things done beyond Sea as they will allow there, shall be allowed here
Where Common and Ecclefiastical Law differs
in Point of Evidence p. 6. c. 15
Several Statutes relating to Evidence p. 13, 14, c. 5 What

What was done at another	
till Record be produced	Page 31, Cafe 56
What Evidence faid at	another Trial is fo
er a estrudist na nnomen	p. 32, c. 59
But Evidence at a former	
Parties is none in another	
Nothing shall be given in Proceedings of the Ordin	
in his Jurisdiction	D. 122. C. 100
If the Party can have bet	ter shall be rejected
1 3 years anolived manual	A CARRY OF A PROPERTY AND A SECOND PROPERTY OF THE PROPERTY OF
To blemish the King's Witn	
twiers and a bancony i	
In a criminal Case of what	the Witness said of
the Prisoner at another	
Whether good p. 27	8, c. 9. and 32, c. 62
Of one Accused of the sa	
Prisoner is of little Wei	ght p. 283, c. 26
Was allowed to be given to	
fince dead, always ackn	
rents then Dead also, to	
America engin (m.). (2.1)	C. 31
Examination. Vide Conf	
Of a Prisoner where it may	be read against him
yarts believing at the par-	p. 25, c. 35
Of others cannot be read if	
ced Viva voce p. 25, c.	35, 36, and 31, c. 52
When the Examination of a	
and when not p. 30, c.	49, 50, 51, and 31,
	c. 53, 54
Erecutoz. See Declarati	
nifter come Erecutoz,	
Plene Administravit,	Retainer, Will.
If not Residuary, Legatee m	ay be a Witness, tho
the Caufe concern the E	State D 62 C 22
On Judgment by Default	on Weit of Enquiry
may not give in Eviden	nce Want of Affect
Fr. 4 Met. 4 mapping on §	p. 164, c. 9
A	110

De son tort cannot give in Evidence a Retainer is fatisfy his own Debt Page 216, Case 5 Payment of Money due to the Wife as Executristis not Evidence to maintain an Action for Money received to the Husband's Use p.163, c. Exemplification. See Animer, Bill, Bull Deposition, Jury, Lieger-book, Difficulties. Of a Recovery may be given in Evidence p. 85
SA Department of the control of the
Under the Seal of the great Session of Wales good Evidence p. 89, c. 1 Begun by the Statute 3 & 4 Ed. 6. & 23 Eliz p. 89, c. 16
Of the Enrolment of a Record is good when of the General Issue; but Quære, if the Issue b
on Nul tiel Record p. 91, 92, c. 11 Of a Record under the Mayor of Briftol's Hand the Record it felf being destroyed, was give
of a Recovery in an ancient Demesne-Cour
of Letters Patent in Evidence or Pleading shall be as good as if they themselves were produ
of Depositions in Chancery when they first con
of an Entry of Goods at Rotterdam no Evidence
p. 6, c. 10
Feoffment. Vide De granta pas, Release Without Livery may be given in Evidence as a
Fine. See Counterpart.
Must be shewed with the Proclamation under Seal p. 89, c. 13
What Evidence will prove them to be certain p. 269, c. 43

Of the Manor of D. if the Party have two Manors of D. Circumstances may be given in Evidence to prove which it was Page 276,

Of one Jointenant amount not to an Ouster p. 169, 170, C. 32

Fishing. Vide General Iffue.

The Lord's having the Soil of a private River, is good Evidence of his having the Fishery p. 237

Fraud. See Riens per Discent.

Voluntary Conveyance is Evidence of it p.276,c.58 Conveyance in Consideration of Natural Affection, if the Party is not indebted, nor in Treaty for the Sale of the Land, is no Sign of Fraud 34 5 4 1 9 7 16 24 00 1 1 7 P. 102, 103, C. 30

Payment of a just Debt on simple Contract before Debt on Bond is sufficient Evidence of Fraud p. 218, c. 57

Freeman. See Comonation.

Was not allowed to prove the Custom of Foreign bought and fold p. 67, c. 44 Fresh Suit. See Escape.

Convenient Suit is fresh Suit in Law p. 222, c. 75

G. Sie in the confload (190)

General Mue. See Adion, Commissioners, De injuria sua propria, Demurrer, Fishing, Infozmation, Iffue, De ung; Administer come Erecutoz, Me granta pas, Mil debet, Mihil habet in Cenementis, Mon dimitit, Mon affumpfit, Mon Gjeeft, Mon est Fadum, Mot guilty, Mut Escape, Mul Waste, Piene Administravit, Piea, Riens per Descent, Son Assault & Son Frank-tenement.

Any Thing that the Party can fay for his Defence

that cannot be pleaded, may be given in Evidence Page 143, Cafe 2 Many Things that may be pleaded may also be given in Evidence p. 143, c. 1, 2, 3, and 144, c. 5, and 145, c. 6 The Reason of pressing it when the Pleas amount to no more, is not that the Plea is insufficient. but that the Record may not be long p.143, c.3 Any Thing in the fame Statute may be given in Evidence p. 148, c. 12 May be pleaded by all those who are fued for acting under the Statute 3 fac. 1. c. 4. Sect. 38. -ich il 1 156, c. 20 And by those who Act under the Statute for carrying Malefactors to Goal p. 157, c. 21 May be pleaded by those who are fued for acting under 21 Fac. 1. c. 20. S. 2. p. 154, c. 18 And by those who act under 20 Car. 2. c. 7. Sect. 7, 8. p. 158, c. 23 And by those who act under 12 Car. 2. c. 23. Sect. 35. p. 159, c. 24 And by those who act under 13 & 14 C. 2. c. 17. S. I. p. 159, c. 25 And by those who act under 27 C. 2. c. 1. Sect. 11. p. 160, c. 26 And by those who act under 4 An. c. 15. Sect. 9. p. 160, c. 27 On an Information on the Statute 5 Ed. 6. A Licence according to the Proviso in the Statute may be given in Evidence p. 289, c. 49 Grand-juryman. Must not be permitted to give Evidence of what was given in Evidence to him p. 83, c. 86 Nor Clerk attending the Grand Jury, to reveal what was given them in Evidence p. 83, c. 85 None of the Grand Jury that found the Bill can be a Witness p. 17, c. 12 or q boming yttanla a stello voo May

Differ 1

May fend for other Evidence than is produced in behalf of the King Page, 18, Cafe 14 Probable Evidence may be fufficient to a Grand p. 18 c. 15 Tury Refufing to give Evidence to a Grand Jury is a Contempt, and finable p. 18, c. 16 Grants. Made fifty Years after I Eliz. there being no Records extant before, are good Evidence that fuch were made before I Eliz. p. 78, 79, c. 72 Guardian. The received of companies will In Socage is a good Witness To produce his Ward to the Reversioner p. 9, 10, Land the Agres of Cheristen of the Jonde ve. 21 H. hand-writing. See Deed. Whether it may be prov'd by Similitude of Hands in Criminal Cases p. 279, c. 19, and 2, c. 3 Deaclay. When and to what purposes it may be given in Evidence, and what not p. 186, c. 13. and 278 c. 12, and 277, c. 3, 4 One Eye Witness worth ten by Hearsay p. 34, Defr. Vide Inquirp. After Judgment by Default on Writ of Enquiry shall not give in Evidence want of Affets p. 164, c. 9 Heir apparent may be a Witness concerning the Title of Land; contra of him in Remainder I. 6:31: C.4-P 5, 0. Jews.

When Witnesses, are sworn on the Old Testament p. 16, c. 6 Impariance.

If the Plaintiff hath the Deed, and will not give a Copy of it, is usually granted p. 108, c. 52
India:

Indiament. See Appeal, B tions, Overt An, Perjury, fon & Wife.	attery, Depoli- Record, Crea-
For Murder, but differing in Sp	ecie Mortis is not
. Of Murder, what Evidence is go	od n 285 c 28
For Coining in London, if fome of doing it there, more may	Evidence is given
doing it in Effex	p. 284, c. 31
Evidence therein, none in an Ap	peal p. 33. c. 66
For not coming to Church, what	p 287, c. 46
For Barretry, the Defendant m	
other Particulars	
Must be produced, if you would had indicted the Witnesses	prove the Party
Of Perjury don't disable one fro	m being a Wit-
ness p. 37, 38, c. 7, ar	
For Perjury, the Person injur'd	
shall not be sworn, because h	
	8 and 282, c. 23
So in Case of Forgery	p. 282, c. 23
In Case of Usury if Money be re	epaid, or of Ex-
tortion, &c. the Party injur'd i	s a good Witness
The state of the same of the s	p. 282, c. 23
For Battery the Party beat is, b	ecause it is the
	P. 59, C. 19
For conspiring to force away	a Woman was
brought against several With	eties, who were
to prove a Marriage in the	Spiritual Court,
and the was allowed for an Evi	dence p.55, c.13
Por not repairing Bridges, Highwa	lys, &c. any cre-
dible Person may give Evidence	e p.71, 72, c.55
Evidence may be given of a trea	ionable Conipi-
racy at any time before or after	
in the Indictment, provided	4.70.77 1044/1
the Indictment found p.	279, 280, c. 20 Neither

Neither is the Indictment tied up to the Place, for it may be laid at any Place, provided it be. not out of the County Page 280, Cafe 20 Indictment for breaking the Chamber of S. in the House of James, Evidence it was the House of Fameson, ill. Sed Q. D. 280, C. 21 For Battery and Affault laid as a Riot, Two acquitted, and Two found guilty, ill. Sed. Q. p. 280, c. 21 Against an Actor for speaking obscene Words in a Play-house in L. no such Play-house is good p. 280, 281 c. 21 - Evidence A. being cheated was admitted to prove the Fact on an Indictment p. 281, c. 22 Yet on an Indictment for a Cheat, in procuring a Note from A. A. cannot be a Witness p. 281, Exceptions to an Indictment must be before Plea pleaded D. 4. C. 7 The same two Witnesses that are to the Indictment, may be fo at the Trial p. 23, c. 31 For preventing Evidence to be given on an Indictment of Perjury p. 33, c. 67 Infants. Vide Don-Age, Don eft Fadum. May be Witnesses p. 16, c. 5 May be given in Evidence on Non affumpfit p. 161, 162, C. 4 Information. See Escape, General Iffue, Informer, Aendoz. For Perjury before Commissioners in Chancery, what is sufficient Evidence p. 289, c. 50, 51 Lies for the preventing of the giving Evidence on an Information of Perjury p. 33, c. 67 For procuring a Warrant of Attorney fraudulents ly from a Woman, tho' the Court on Conviction will fer aside the Judgment, she was P. 50, C. 19, 20

7 1 1 A A A A A A SOLET	
For Usury, where the Borrower shall on shall no	t
give Evidence, and why Page 58, Cafe 17	•
and 60, c. 22, and 282, c. 23	
On Escape, the Party who recovered may be a	
Witness p. 61, c. 24, and 81, c. 7	7
On what Penal Statutes the Defendant may plead	
the General Issue, and give the Special Mat	
	4
If for Intrusion, the Defendant may plead the	
General Issue, and give the Special Matter is	
Evidence p. 155, c. 19	,
Informer. Vide Information.	-
Whether he, being to have a Moiety of the Pe-	
nalty, be a good Witness in Information or	ì
the Act against Deer-stealing p. 61 c. 24	1
Is a good Witness on the Statute for suppressing	
Conventicles, tho' to have a Moiety p. 62, c. 24	
Inquiry. See Affumplit, Debt, Deit, Tref	
pass & Writ of Inquiry.	9
On the Execution of one in Assumpsit, the Plain-	
tiff must prove his Debt p. 163, c. 8	
Intofiment. Vide Deed.	6
Of a Deed fealed by feveral, and acknowledged	
only by one, is good p. 103, c. 32	
An Indenture of Bargain and Sale inrolled, may	
be given in Evidence without proving the Ex-	
ecution p. 270, 271, c. 44	0
Of Deeds on the Statute admitted every Day in	
Evidence, without Witnesses of the Sealing	
and Denvery	
Sworn Copy of a Deed inrolled, good Evidence	
p. 271, c. 44	
Infimul Computaffet. Vide Account, Al-	-
funfilit.	-4
The Evidence shall not be of the Value of the	
Things, but of the Accounting p. 171, c. 40	-
Iniperimus. Vide Deed.	
When good Evidence of a Deed, when not p. 78, c. 25	
Intend.	

Intendment. Vide Prelimption.	Trans.
Passed away, don't disable a Person from being a Witness to the very Deed which passed in Page 74, Case 6	ì
Interlineation. Vide Deed, Dielumption Shall be presumed to be made when the Deed	4
Inventory. See Plene Administrabit. By Sheriff of Goods taken in Execution is Evi-	-
Of Goods taken by Appraisers, may be given is Evidence p. 133, c. 111	à
Joint-tenancy. See Abatement Declaration, Plea, Tenancy in Common.	,
In Trespals must be pleaded in Abatement p. 231.	
Jointenancy, Tenancy in Common or Copartner- ship, may be given in Evidence on the Ge- neral Issue in Trover by one p. 145, c. 7	-
Possession of one Jointenant is the Possession of the other, so as to prevent the Statute of Li-	•
mitations p. 169, c. 32 Fine of one Jointenant amounts not to an Ouster p. 169, 170, c. 32	1
Journal. See Parliament Roll. Of the House of Commons is no Evidence p. 277.	
Inue. See General Inue, Prestription, Tref	
Can only be of Matter of Fact, not of Matter	
Payment at the House, Evidence that it was paid in the House is good p. 221, c. 70 What Evidence is repugnant to it p. 273, c. 48	
On Traverse of a Lease pleaded Medu & Forma, Lease commencing at a Day different, and	
good q fon den will sell a too she had pool nett	

On the Sufficiency of the Tender of Amends in
Trespass, the Plaintiff shall prove no more Trespasses than one Page 232, Case 31
Common or no Common by Prescription, Evi-
dence of Common pur cause de Vicinage is not
good p. 235, c. 37 On a Custom to have Estovers in Terris & Tene-
On a Custom to have Estovers in Terris & Tene-
mentis, Evidence for a Custom of Estovers for
the House only, is not good p. 237, c. 41 Indices. Vide Court.
Are to determine what Law, what not p.4, c.6
Have not the Evidence of the Fact, the Jury have;
and in what the Evidence differs p. 3, c. 1;
and 4, c. 2, 3, 4
To explain the Evidence, and not the Profecutors
May be sworn in Court as a Witness p. 17, c. 9, 10
May not be fworn in his own Caufe p.33, c. 70
Inry. See Deposition, Evidence, Erempli- fication, Petty Jury.
Cannot be charged to try Matter of Law, but only Matter of Fact p. 3, c. 6
May find there was a Patent, tho' there is no E-
vidence of it, but the Recital of it in another
p. tot, c. 29
May have an Exemplification of the Deposition
of Witnesses, if dead p. 114, c. 66
Not if some of the Witnesses are living p.114, c.67
If Part of the Depositions were read, Part not,
they may have the Exemplification with them
Must give a Verdict, tho' no Evidence be given
adilio de de la la la contracta de la contracta de partir de la contracta de l
Are to judge upon the Evidence, not the Judge
p. 3, c. 1, 2, and 4, c. 3
May have the View, not so the Court p. 4, c. 4
May take Cognizance of the Law arifing on a
Fact p. 4.e. 5
Can

	The TABI	L.
Court,	but what is under	with them out of Seal Page 18, Cafe 17
Turvnian	one Page 23	Linux consultation
May be a	Witness	p. 17, c. 10
	litness, must be swe	
	e Counsel and Judg	The state of the s
Who was	fworn to try an In	formation for the
	ut discharged from	
	orney General's Wit	
	ot on a new Inform	
the De	Jury intended, to	A STATE OF THE PARTY OF THE PAR
the De		p. 288, c. 47
Kindzed.	dence and not the	To explore the property
Is no Excep	ption to an Evidence	e p. 80, c. 75
King. Vi	de Burning in thi	e hand, Pardon,
	rdon the Burning i	n the Hand in an
	woned and exel	
Whether t	ne may be a Witne	ess under his Sign
Manual	H 010 27404 27	D. 142, C. 132
Meffage is	good Evidence in	a Matter concern-
	y the King, not wl	
	xt Party and Part	
	to levy War, is I	
paffing	his Death	D. 22. C. 25
Sopra Person	epotal de lece rec	A SULL TO THE TOWN
man's drive of	ottendil sassali sala	10 1764 11
Terratee.	Vide Will.	A MU A CITE A SUL
	abive on that his	
Were produ	uced and read as Ev	idence of Compas-
fing the	King's Death	p. 22, c. 28
Note: Tho	Substance thereof	was only laid in
the Ind	ichment of jon wa	ibid.
Liener-03	ooks. Vide Erer	AS SALES OF THE PROPERTY OF THE PARTY OF THE
Cannot be		p. 89, c. 16
i Can	Y 3	Livery.
CHARA T		2

1110 2 24 20 22 45/1
May be proved by a Tenant at Will of Part of Page 80, Cafe 77
Libels against the Government. and solvery
Publishing a treasonable One, Evidence of Com-
passing the King's Death p. 12, c. 27
Evidence he land ou Mhe Money in repairing
Matket, Vide Sale in Market Poert. Master and Servant. Vide Case. Modus decimands. See Prohibition.
OF SOLE THE WAY OF THE PARTY OF
nd Debe for Rein, sett Mor Debiell, & he non
Cannot be proved but by an Affidavit p. 6, c. 19,
in 13113 and 33, c. 69, and 37 c. 5
When the Law presumes an Affirmative, then the
Negative is to be proved p. 129, c.99
De granta pas. Vide Deen, General Inue, Feoffment, Rasure, Reversion.
Whether on this Flea in Waste the Defendant
may give in Evidence that he never attorned
De ung Administer come Erecutor. Vide
Executor, General Inne, Plene Adminis
On this Plea the Defendant may give in Evidence
that he is Administrator, and not Executor
102 39 ,812 .q beneat against one olatter for
Whether on this Plea Evidence may be given
that the Party is still living p. 218, c. 60
Dew Crial.
Shall not be granted for the Judge's Over-ruling
one of the Parties in a Matter of Evidence,
which he ought not p. 214, c. 43
Mil debet. Vide Account, Debt, General IC
we Me Mil habuit in Tenementis Reparation.
Pleaded to Debt on Account, the Defendant may
give in Evidence no Account p. 199, c. 1, 2

To Debt for Rent, whether the Defendant may give Entry and Expulsion in Evidence Page 203, Gase 9
Evidence may be given that the Plaintiff had no
Whether on this Plea the Defendant may give in
Evidence he laid out the Money in repairing
the House p. 204, c. 14 Statute of Limitations may be given in Evidence
on this Mue, but not on Non affumpfit p. 109,
In Debt for Rent, levy per Diftrefs, & fic non
debet, a Release or Payment may be given in
Evidence valent we ve sud to p. 169, c. 31)
Mil habuit in Tenementis. See General
Issue, Mil debet, Mon Demisit, Plea.
May be Pleaded or given in Evidence p. 1455 c. 5
An Almanack, in which the Father had writ the
Party's Age, is good Proof p. 140, c. 126
Mon Affumplit. See Affumplit, Debt, De-
neral Istie, Payment, Plea, Promise, Re-
On this Plea the Defendant may give in Evi-
dence Infancy p. 164 c. 11
Feme Covere may give Coverture in Evidence
rousex I ton bee rousificime a p. 165, c. 12
In an Action brought against the Master for
Goods delivered to the Servant, it is good
Money Evidence that he always gave his Servant
May give in Evidence that the Plaintiff was at
the Time of the Sale, Partner with another
24 0 18 19 po 100 in ingue pai 66 de 18
The Defendant may prove the Sale to be to two
minftead of four surgery mining p. 165.0C 15
On this Plea the Defendant in an Action on mu- tual Promifes of a Marriage, may give in E-
Y 4 vidence

widence any lawful Impediment, but not a
Pre-contract and Page 17339 Cafe 46
On this Plea, Infancy or Payment may be given
aff in Evidence a hast od ad apater 162; 6.4
Where on this Plea a foreign Attachment may
be given in Byidence, or not, and how p. 162,
Statute of Limitations no Evidence on this Plea,
contra on Nibil debet
Admits all that was laid in the Declaration, and
was traverfable oggal bed p. 174, c. 49
Pleaded by an Executor to a Promife to pay
Detts of the Testator, whether he may give
Want of Affets, or that the Testator owed
nothing, in Evidence p. 175, c. 30
Don Mumplit infra fex Annog. of 701
Acknowledges the Debt p. 175, c. 51, and 176,
c. 34
Pan Dimilit. Vide General Mue, Mil has buit in Tenementis.
On this Plea the Defendant may give in Evidence
that the Plaintiff had nothing in the Land
76 de Distriction de la constant de p. 205, C.415
If the Plaintiff prove only a Demise of Part, he
fails p. 205, c. 16
If it be pleaded in Ejectment, the Plaintiff shall not recover for any Part, unless the Ejectment
be proved of all that is laid in the Declara-
tion p. 267, c. 35
On Non demisit modo & forma, what may be given
in Evidence beed beed p. 205, c. 17
Don Compos.
Proof to be allowed to make one non Compos, and
econtra p. 50, c. 31
Bon Ejetit. Vide Gjeament, General Issue.
If the Plaintiff in Ejectment proves Ejectment of
half the Number of Acres laid in the Decla-
ration, he shall recover for so much p.267,c.35
J2011

Don elt Fadum, See Cove	rture, Deed,
Executor, General Mue,	Infancy, Ra
Infancy or Payment maystulgiven	
If it is proved to be the Deed of	
Declaration is only against on	
Defendant may take Advanta	
On this Plea the Defendant may	
on the Bond's being deliver'd a	
than what it bears Date was	
Evidence of a Bond supposed to b	
Declaration on the 15th of	
were not fealed till the 18th,	
cannot take Advantage of it	p. 208, c. 28
Shall relate to the Day of the Isl	
not to the Day of Trial p	
Whether Evidence of Payment a	
ing the Deed by the Plaintiff be	
The Defendant may give nient liter	p. 210, c. 32
So he may that he delivered the	
crow or grants and figure p	210. C 33. 34
All the special Ones are impertinent	
the Defendant brings all the Pr	
	10, 211, c. 35
Pleaded to Debt on Bond brough	
admits the Plaintiff to be Execu	
Coverture may be given in Eviden	
Infancy may not	ngu ibid.
On this Plea, the Defendant may g	ive any Tring
dence dence the Deed never w	p.211, c. 36
Rote. See Affumplit, Conlide	
dence.	CCONTRA
Sign'd by feveral Clerks is no Es	
iff in Ljectment proves flor Shreat	p. 141, c. 128
Must be shew'd on the Trial, tho'	not mention'd
in the Declaration, of the I	romife ought
OFIL	to

to be reduced into Writing by the Statute of Praodé Tempo, a consbiva Page 168, Cale 28 A Goldsmith's Note to pay Money or Tickets, is Evidence of his having received the Money, and here much Learing concerning the Transferring of Notes, &c. p. 248, 249, c. 1 Whether fince 3 & 4 Ann. c. 9. a Note be conclufive Evidence of a Confideration Quere-The Court was divided oursbip, 249, 250, c. I The want of Confideration may be given in Evidence, for the Statute did not delign a Man hould recover where there was no Debr, but only that promissory Notes should be as Bills of Exchange p. 2519 c. 2 But (Value received) is Evidence prima facte that a Confideration had been given to the Drawer, &c. p. 251, c. 2 Mot guilty. See Administratoz, Damage, Ejedment, General Iffue, Plea, Sale in Market-overt. In Trover it shall not lie in the Defendant's Mouth to fay he was a Thief p. 186, c. 13 In Trover brought by the Administrator on the Possession of the Intestate, a Will cannot be given in Evidence p. 134, c. 4, and 191, c. 25 But if it be on the Possession of the Administrator, it may p. 134, c. 4, and 191, c. 25 In Trover, Evidence that the Beafts were taken and fold by the Commissioners of Sewers, and odgood anshield with the web anop. 188,000 14 In Trespass, on Nor guilty, the Defendant cannot give in Evidence, that the Place was a Highway 0 0 147, c. 10, and 224, c. 1 Nor in Cafe for difturbing the Plaintiff of his Common, on Not guilty, can the Defendant give Right of Common in Evidence, Per Holt, who faid, he knew the Contrary permitted p. 147, c. 10

If the Defendant pleads this Plea in Ejectment, he shall not give in Evidence a former Mortgage made to himself Page 262, Case 26
of a Copyhold, the Plaintiff may give a Licence in Evidence p. 271, c. 45
Whether if Servant or Wife put the Defendant's Cattle into another's Soil, the Defendant may give this in Evidence p. 226, c. 11
Evidence that my Cattle, thro' Default of the Plaintiff's Pences, escaped, is not good p. 227, c. 14, and 238, c. 44
For taking Goods, the Defendant may give Evidence, that he took them by Virtue of a Commission of Bankrupt p. 227, c. 15
To a Declaration for breaking the Plaintiff's House, and taking Goods, the Desendant cannot give in Evidence, that he did it by Virtue of a Commission of Bankrupt ibid.
In Trespass may give a Lease for Years in Evidence p. 227, c. 18
May give in Evidence that the Freehold is in an- other p. 227, c. 19, 20
In Trespass, Tenancy in Common betwirt the Plaintiff and he by whose Command the Defendant entred, may be given in Evidence p. 145, c. 7, and 231, c. 25
Cannot give in Evidence Tenancy in Common with a Stranger p. 231, c. 25, and 232, c. 28
Tenancy in Common with the Defendant may be given in Evidence p. 145, c. 7, and 232, c. 28,
The Party cannot justify by Reason of Common p. 238, c. 44
The Defendant cannot justify for a Rent-charge ibid.
In Trespass de Ux. abduct cum bonis Viri, if the Wife

Wife had Sentence for Alimony, it is go Evidence Page 240, Cafe The Defendant may give the Restitution of Goods in Evidence, to mitigate the Dama p. 241, c. For taking Hawks, Evidence that the Plain leased a Wood to the Desendant, and dur the Term the Hawks bred there, and go	the ages
p. 241, c. In Trespass for beating 7. S. the Plaintiff's S. vant, may give in Evidence that 7. S. not his Servant p. 241, c. It is a good Plea where no Trespass was comme ted p. 241, c. In Trespass for my Dog's chasing another's She	Ser- was 52 nit- 55 ep,
and killing one, it is good Evidence that did it without my Incitement p. 241, c. On this Plea to an Indictment for Battery, Defendant may give Evidence that the P fecutor struck first p. 287, c. On this Plea to an Indictment for not repair the Hignway, what may be given in Evidence p. 291, c.	he 54 the ro- 43 ing
Cohabitation is sufficient Evidence p. 163, c. Pouel Alignment. Vide Crespass. The What Evidence the Defendant may give p. 23	. 7
Dul Escape. Vide Escape, General Issue On this Plea, the Defendant cannot give in Education of Arrest p. 222, c. Dul Chasse. Vide Chasse, General Issue. On this Plea the Defendant may give Reparation before the Writ purchased p. 274, c. 51, The Desendant may give in Evidence that he of ly lopped the Tree p. 274, c.	1e. vi- 7.4 ti- 54
11100 TI	nę

The Defendant may give in Evidence that he dug
Et elas fendant may give the Restitution of the
Any Thing is good Evidence which proves it no
P. 274, c. 54
But justifiable Waste cannot be given in Evidence
.bidileased a W south the Defendant, and curing
che l'erm the Hayes bred there, and good
Even the Winner with order country 24 Eyrs 50
Datis See Witnestes rot cleqler I' all
Betwixt other Parties are no Evidence p. 34, c. 75
Made on an Indictment of Felony by the Profe-
cutor and his Wife, in an Action brought
against the Prosecutor and his Wife for a ma-
licious Indictment, shall be admitted to prove
a Felony committed p. 180, c. 4
Are entire and not to be admitted partly true,
and partly falle months p. 34, c.73
Defendant was give Engle noitspild@
If Indorsment by Obligee of Interest paid on a
Bond, be Evidence of Interest paid p. 142,
Comebive High Stide Regime on the Evidence
Office. See Damage, Eremplification.
Found before Escheators, shall not be given in
Evidence, unless exemplified p. 95, c. 24
Officer. See Attachment, General Mue.
May plead the General Issue, and give the Spe-
cial Matter in Evidence p. 151, c. 16, and
Proof that Excise-Officer kept or exercised the
Ensile Office at the Time when the Matter in
Excise-Office at the Time when the Matter in
Controversy at the Trial happened, without
proving the Commissioners Names to his Com-
mission, good Evidence Waster p. 14, c. 15
The Defendant may give in Evidence ibring Qua-
Of Chancery is not Evidence, unless the Copy
of the Bill is produced p. 127, c. 93
4 1 4 4 7 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1

Diett Aft. Vide Indiame	nt. Creafon.
Not laid in the Indictment, w	hen it may be gi-
ven in Evidence dorudo	Page 24. Cafe 33
Per Hale, two Witnesses neces	Tary to fome one
	p. 20, c. 22
But one Witness to one Overt	
to another of the fame T	reason, good ibid
s to prove that a complete the	and 26, c. 41
Even one Witness with other co	
ftances, good in Treason	ibid.
If Words be laid as an Overt A	
fon, 'tis sufficient to prove	the Substance of
The them has the me will some	p. 22, c. 26
If an Overt Act, tending to	the Compassing
the King's Death, be laid in	n the Indictment,
any other Overt Act which to	ends to the Com-
passing, &c. good Evidence	p. 24, c. 33
No Evidence to be given of an	y Overt Act not
laid expresly in the Indictme	ent p. 27, c. 42
Dutlaw. Vide Witness.	THE ROTAL
Is no Witness	p. 48, c. 23
Dutlaway. Vide Ejeament.	or and the forest
Must be produced in Ejectment	
fee under that Outlawry	p. 203, c. 29
Pengana	e and street party
Pardon. See King, Perju	
Of Felony, makes one a Witnes	s, not of Periury
p. 37, 38, c. 7, 9, 10, and 3	0, c. 11, and 43.
old one to the your the de Ts,	and 44, c. 18, 19
Don't restore the old Credit, but	t gives a new one
p. 37, 38, c. 7, and 40, c. 1	2, and 45, C. 19
Restores one attainted of Treas	on p. 48, c. 24
Whether a Promise of a Pardo	n disables a Wit-
parliament-Boll. Vide Jou	p. 49, c. 24
Parliament-Roll. Vide Jou	rnat. and a creat
Is to be esedited before the Journa	1-Book p.88, c.10
าจากการใ	19arts

brought against feers of the Poo	may be Witnesses in Actions Church-wardens and Over- Page 71, 72, Case 55
allowed, and wh	ove a Woman a Whore, not ly p. 83, c. 87
All things necessary cumbent shall b	to prove him a compleat In- e intended, unless the other Evidence to the Contrary,
puts the Parfor	p. 128, 129, c. 98, 99 ence by which the Bounds of
the Parish be enl	arged p. 77, c. 69, and p. 51,
	jeament O redio vige
Payment. See 9	t be a Witness p. 78, 79, c. 72 Mumplit, Debt, Pon Al- Presumption, Receipt, Re- ad Diem.
	dence on Non affumpfit plead- p. 165, c. 10, and 162, c. 4
Is good Evidence to	an Assumpsit in Law, not to p. 167, c. 24
To Debt for Rent,	Evidence of Payment to the d good p. 203, c. 11
To another by the	Plaintiff's Appointment, is
Of a Bond of twe	nty Years standing shall be Demand is proved, or good
Payment of Money of not Evidence to	rance shewn p. 213, c. 40 lue to the Wife as Executrix, maintain an Action for Mohe Husband's Use p. 169, c. 6
In Debt for Rent, le	ry per Distress, & sic non De-
Park p.88.c.ro	Pedigtee.

Pedigree. See Baronage.	
Drawn by Sit William Dugdale, and fworn to	he
taken from ancient Books and Records of	his
Office, is not Evidence, tho' the Books a	nd
Records were Page 135, Cafe 1	-
3 33)	
Rejected p. 141, c. 1	30
When they are Witnesses must be sworn p.	1
Devision Con TurkSmont Doubon	. 7
Perjury. See Indiament, Pardon.	#
Of Witnesses for the Defendant in Indictme	nts
to be punish'd as other Perjury p. 27, 28, c.	43
Where one Convicted of Perjury may be E	V1-
dence, and econtra p. 37, 38, c. 7, and 44,	
	19
Petty Jury. Vide Jury.	ď.
Pirate. See Attainder, Confession.	4
If attainted is no Evidence p. 50, c.	29
Players.	
That act for Hire are Infamous p. 34, c.	80
Plea. See Abatement, Battery, Debt, D	=3(
livery, Durels, Entry and Expulsio	n.
Escape, Evidence, General Iffue, Joi	n
tenancy, Mil habuit in Tenementis, Mi	m
Affumplit, Dot guilty, Payment, Ples	ne
Administravit, Releafe, Traverse, Er	n:
ver, Tenancy, in Common, &c.	31
Of a Custom in a Manor for the Widow to e	n_
joy the Lands, during her Life, is not main	
tain'd by Evidence of a Custom to enjoy the	-
Durante Viduitate p. 269, c. 4	
Containing Matter of Law, is good p. 143, c.	35
and 144, c. 5, and 147, c. 1	I
Debt on Bond supposed to be made by Master an	Id
Fellows of a College, cannot plead there we	
then no Fellows p. 220, c. 6	
In Trespass, that the Plaintiff bid his Servant p	
the state of the s	36

the Defendant's Cattle to his Soil, and good Page, 226, Cafe 12
In Trespass supposed at C. the Defendant justifies at K. and traverses his being Guilty at C.
p. 226, c. 13 In Trespass for pulling down the Plaintiff's House, that the Plaintiff had none, is not good p. 227, c. 16
In Trespass that be assisted J. S. in putting his Cattle on his Soil, is no good Plea p.227, c.17 In Trespass for entering his Close and taking Corn, that they were Servants, and took them as Tithes severed from the nine Parts, and good
p. 228, c. 21
Matter of Justification or Excuse, in Batteries, must be pleaded p. 241, c. 55
In Trespass for beating J. S. his Servant, that J. S. was not his Servant, and good p.241,c.52
To Trespass that the Goods were the Goods of J. N. who gave them to him, by Virtue of which he took them, absq; boc, he took any Goods of the Plaintiff, and ill p. 241, c. 53
In Trover, Sale by Virtue of a Commission of Sewers, and good p. 188, c. 14
So of the Custom to take Toll p. 188, c. 19
Submission of all Matters to Award, Evidence of Submission of all Matters touching Account,
if other Things are not proved in Difference, is good p. 178, c. 37
That he rook them, being Parson, as Tithes, and p. 190, c. 18
In Trover for a Horse that he is an Inn-keeper, and the Horse died in his Custody, and ill p. 190, c. 19
Property of Goods in a Stranger, and ill p. 190, c.20
In Trover that the Goods were pawn'd, whether
good or not 1
Z In

In Trover brought by Exe	
the Administrator, and	
All Justifications in Trover,	
	p. 191. c. 23
No Account to Debt on Accou	int, and good p. 199, c. 1
Payment to Debt on simple C	Contract is ill p.202,c.6
Delivery of another Thing i	n Debt or fimple Con-
tract, is good 19 book	p. 202, c. 6
That the Plaintiff left his Se	rvice, is good in Debt
for Wages	ibid.
Levy per Distress to Debt	
dant cannot give in Evic	
had nothing in the Lan	
In Debt on Bond, Deliver	
be pleaded	p. 210, c. 34
Plene Administravit. S	ee Account, Assump
fit, Debt, Erecutor,	General Juue, In-
ventory, Plea & Ret	ainer.
Release of a Bond forfeited	
deration of the Paymen	
Evidence to charge th	e Executors for the
	p. 177, c. 55
If this Clause, Et quod ipse	
talla dicti Testatoris vel l	
brevis præd vel unquam	
Defendant may give Pay	
out Suit subsequent to the	e bringing the Action,
In Debt, admits the Debt	p. 178, c. 50
In an Action on the Case doe	
and the Plaintiff must p	
If to an Action of Debt	
prove Payment of Debt	
prove it was fealed and	delivered wihid
To Debt on simple Contract	
and a second motor dames	on

The TAB	TT
The 1 A B	L L.
on Bond, without provin Bond, is good Evidence	Barn orang of the
On this the Defendant may	rage 213, Cale 42
Redemption of Goods of	the Teffaror's mink
their own Money	D 214 C 44
So that the Defendant has give	n Security for Debre
due from the Testator, an	
ano lue mit to total an annill a	
Whether this be a good Pl	
Action a Debt becomes d	
THE THE RESERVE TO THE RESERVE	p. 215, c. 48
On this Plea, an Inventory en	shibited by one Ex-
ecutor, shall not be Evide	
The fresh de line breef our	p. 217, c. 52
Actual Payment must be prove	
for Debts due to the Test	
guent involue a 1106	
Recovery by another cannot b	
Whether the Defendant may g	p. 217, c. 54
Payment of a Bond in wh	
Teftator were bound	
Possession.	p. 210, c. 30
If continual and quiet, stands	· · · · · · · · · · · · · · · · · · ·
	p. 2, c. 3
As Servant to another, doth n	
ty from giving Evidence co	oncerning the Title
of the Land	and an interior
Prescription. Vide Iffue.	or in Evolution
For Common Evidence that th	
mon, paying a Penny a	
akt programme the contract of	p. 235, c. 38
Presumption. See Bout	idactes, Anteno
ment, Interlineation,	Safittetir' Pafane
& Surrender. Is of three Kinds, Violent, P	robable and Tight
as of times aximus, violent, I	p. 2, c. 2
Z 2	Violent

Violent is of great Weight	Page 2, Cafe 2
In criminal Cases, that the Person	
Fact alledged, if it be proved	
done by one of the Name, if	
produced	p. 278, c. 8
Shall be that Things of great Anti-	quity were done
in form p. 2, c.	3, and 7, c. 20
in form p. 2, c. Shall be that a Person once in Bei	ng is still living
rowally and the property of th	p. 7, c. 21
But vide now 19 Car. 2, c. 16. an	d 6 Ann. c. 18.
प्यासानि । अस्ति स्वास्ति । व्यासानिक एकः अस्त्रावस्ति ।	p. 7, 8, 9, c. 21
Probate. Vide Will.	hada garanasan i
Where a collateral Proof shall be a	
the Testator's Intent in a Wi	1 p. 94, c. 19
Of a Will in the Ecclesiastical C	ourt as to the
Personal Estate may be give	
not as to the Real	D. 132. C. 107
not as to the Real When not conclusive Evidence	D. 132- C. 108
1920clamation.	official the stall
To entitle the Lord to a Forfeitun	e. must be pro-
ved Viva voce	p. 276, c. 57
Pzohíbítíon,	75.2703 6.37
Modus must be proved within fix C	alendar Months
by the Plaintiff in a Prohibition	
tion shall go	p. 128, c. 97
	p. 120, c. 97
Promise. See Assumpsit, Mo	it Munimhur &
Submission.	AND PLANTE
Of an Advantage, if the Party re	
that Person from being a Witn	
Assemblance . Low Could	and 77, c. 68
Parol Promife to be performed on	
is not within the Statute of Fra	
Proof. See Evivence, Presi	imprion, Cett-
nels.	The confession
If no particular Proof is agreed on	, must be made
to a Jury	3 bop 6, c. 19
	19ublick

Publick Motary. Testimony on Trial of Things beyond Sea, is good Evidence P. 5, C. 14 Duakers. Are not sworn, but make folemn Affirmation p.17, Duantum Weruft. Vide Affumpfit. Promise to give Content is good Evidence p.165, For Rent, an express Promise must be proved p. 167, c. 22 Ducen. Vide King. Cannot take by Leafe unless enrolled p.135, c.115 en m Hvideacc Rasure. Vide Deed, De granta pas, Mon est Fadum. Whether it may be given in Evidence on Non eft factum pleaded p. 207. c. 24, and 168, c. 25 Receipt. Vide Payment. Is only Evidence of Payment of what went before but is no Discharge p. 142, c. 131 For the last half Year's Rent, is Evidence all before was paid p. 204, c. 13 Recital. See Confideration, Deed, Jury, Payment. Of Letters Patent in a Patent, is not sufficient Evidence of the recited Patent p. 101, c. 29 Of the Payment of the Confideration-Money for the Purchase, is not sufficient Evidence, but the Payment must be proved by Witnesses p. 103, c. 32

Of a Deed, if it be proved there was fuch a Deed, is good Evidence, otherwise not p. 104, c. 36

Z 3

Of a Lease in a Deed of Release, is good Evidence of such a Lease, against the Releasor and those deriving under him, not against Strangers without proving 'twas lost Page 169,

Record. See Copy, Debt, Exemplification & Indiament.

Being burnt, and not directly in Issue, but only
Matter of Inducement, may be proved in
Evidence p. 86, 87, c. 2, and 87, c. 7

A Record of Sessions may be Evidence to prove the Plaintiff had not taken the Oaths p. 292,

Where it shall be read in Evidence p. 31, c. 57, and 35, c. 2, 4

Refusal. Vide Efcape.

To shew a Prisoner shall be an Escape p. 193, c. 30 Release. See Delivery, Feoffment, Mon

Affumpfit & Plea.

Tarining

Enables one interested by Act of Law to be a Witness; but not so, if it were a Champertuous Interest created by the Party, though signed in Court during the Trial p. 65, c. 38, 39

Cannot be given in Evidence to discharge a Promise on Assumpsit in Fact p. 167, c. 25, and 168, c. 26

May be given in Evidence to an Affumpsit in Fact, in Mitigation of Damages p. 167, c. 25

May be given in Evidence to an Assumpsit in Law, in Discharge of the Assumpsit p. 167, c. 25

In Debt for Rent, levy per Distress, & sie non debet, a Release or Payment, is good Evidence p. 169, c. 31

Once entered on Record may be proved by a Copy of the Record, and need not prove either Sealing or Delivery of it p. 205, c. 18

Remainder. He in Remainder cannot be the Title of Lands, contra	of Heir Apparent
Reparation. See Mil De Of a Pew in a Church, must be by the Person who entitled	het. e given in Evidence himself to it p.193,
Replevin. The Party may give in Evide tiff had his Cattle again, in mages Replication. See Assumpt	nce that the Plain- Mitigation of Da- p. 273, c. 49 It infra fer An=
Affets, whether the Plaintiff m riginal on Trial	ust produce the O- p. 214, c. 43
Affets on this Islue, the Day shall be saved to the Defe	ndant in Evidence p. 214, c. 44
Affets by Discent is good Evid the Father was seised, and enter	that the Son did
Fee depending on an Estate-ta Evidence Alienation by Fraud may be	il may be given in
Affets, it is good Evidence to f	p. 219, c. 03 hew the Executor,
by the Will of the Deceas	'd, fold Land and p. 218, c. 58
So of Damages recovered in 'Bequest. Vide Demand, At any Time on licet sepius requ	Mon Anumput,
in Evidence At any Time before the Day of laid in the Declaration may	p. 170, c. 33 of Special Request
dence Is admitted by the Plea of I	p. 170, c. 33 Non Assumpsit, and
need not be proved Z 4	p. 170, c. 34 Retainer.

The TABLE.
Retainer. See Copy, Executor & Plene
Of the Spining Court in Aidardinance
May be proved by the Oath of one who faw it
under the Party's Hand and Seal Page 141,
Cafe 129
May be given in Evidence on Plene Administravit
pleaded p. 215, c. 47
Reversion. Vide Me granta pas.
Of a Copyhold, disables one from being a Wit-
ness to prove the Boundaries of a Parish p. 81.
c. 78, 79, 80, 81
Rebocation.
Shall never be intended, if not actually proved
p. 104, c. 34
Riens passa per le fait.
Whether if the Defendant in Waste plead fo, he
may give in Evidence that he did not Attorn
이번 교육을 되면 사람들에 가는 그는 사람들이 없는데 이번 시간에 되었다면 되었다면 하는데 그는데 그는데 그는데 그는데 그는데 그는데 그렇게 되었다면 하는데 그는데 그는데 그는데 그는데 그는데 그는데 그는데 그는데 그는데 그
p. 273, c. 50
Riens per Descent. Vide Fraud, General
Jule.
Robbery. Vide Statute.
The Party is a good Witness in an Action against
the Hundred to prove the Robbery p. 51, 52.
c. 5, and 53, c. 8, and 54, c. 9
A SHAREST TO THE CONTRACT OF SHELLING
but 12 5 to 1
[2] [2] [2] [2] [2] [2] [2] [2] [2] [2]
Sale in Market-Diert. Vide Bot guilty.
Cooker Trope
Batket, Crover.
In Trover may be given in Evidence p. 189, c. 17
May not be pleaded in Trover ibid
Scotland.
What Crimes committed there, shall be tried in
England p. 20, 21, 22, c. 24
Sentence 3 44 Valle in the first that the
Of the Ecclesiastical Court concerning Tithe
may be given in Evidence p. 130, c. 101
Not
No.

Not if it relates to Lands Page 130, Cafe 102
Of the Spiritual Court, in a Cause within their
Jurisdiction, is conclusive Evidence in the
Point tried; contra of a collatteral Matter
p. 131, c. 103

Where not founded on legal Evidence, may be made void at Westminster p. 6. c. 15

Sheriff.

In Trover brought for Goods taken in Execution must plead Not guilty p. 189, c. 16

Shop-Books. Vide Books.

No Evidence after a Year for any Thing, unless it be between Traders, and then only for such Things as directly fall in the Compass of their Trade p. 137, c. 118

Simony.

Shall not be proved after the Death of the Party, unless he were in his Life-time convicted p. 33, c. 68

Solicitoz.

Is not bound to disclose his Client's Secrets p. 82,

Solvit ad diem. Vide Day, Debt, Pay-

Whether on this Issue, Payment before the Day may be given in Evidence p. 229, c. 23, and 212, c. 38, 39

Son Affault. Vide De injuria sua propria, General Mue, Trespals.

How the Evidence shall be on this Plea p. 242, c. 57, and 243, c. 58, 59, 60, and 224, c. 61, and 245, c. 62

Acknowledges a Battery p. 243, c. 58
Son Frank-tenement. Vide Genetal Mue,
Crespass.

Whether on this Issue, Seisin in Right of his Wife is good Evidence p. 230, c. 24

Stat-Chamber. Don't allow Witnesses who were once Defendant	
Page 62, Case 2 Statute. See Adion, Assumptit, General Mue, Pon Assumptit, Robbery & Mendo, 1 & 2 P. & M. Whether it repeals that of Ed.	1
p. 23, 24, c. 3	2
Books, good Evidence of a Publick, not of	
p. 89, c. 12	1
Of King James I. relating to Attorney's Fees	
may be given in Evidence on Non assumpsi	
pleaded p. 168, c. 29	
Overt- Act, if laid, tho' the Evidence be no	
laid p. 279, c. 16	_
Steward.	
Allowed to give Evidence as to the Certainty of	_
Fines p. 79, c. 73, and 79, 80, c. 74	
Stigmaticks. See Burning in the Band.	Г
If 10, may be known to the Jury though not to	
Judge or Party p. 4, c. 3	
Are not Witnesses p. 40, c. 12, and 43, c. 16	Ĭ.
Is a good Witness when Pardoned p. 41, c. 12	
If so for no scandalous Cause, whether an Evi-	
dence p. 59, c. 19, 20	K
Submission. Vide Promise.	
To an Award, is no Promise, but only Evidence	
of one property p. 203, c. 8	
Subscription.	
Of several Parishioners to pay Tithes in Kind, is	M
no Evidence against the Rest p. 141, c. 128	
Surrender. Vide Pzesumption.	
Shall not be intended p. 104, c. 34 Contract of a new Lease, is Evidence of the Sur-	
suspension. Vide Entry and Suspension.	
Subcuttout Ame Surfa und Surbentuntte	

Tenant. To the Precipe shall be in	tended, if the Contra-
ry is not proved when	a common Recovery is
produced	Page 93, Cafe 17, 18
Tenancy in Common	t. See Declaration.
Jointenancy, Mot g	milty & Plea.
With a Stranger is a	
describe all the own in	p. 232, c. 29
Tender.	policaded a bohasique
Of mix'd Money that is o	
	d Tender p. 213, c. 41
Teffig. See Mitnels.	
Whence derived	p. 16, c. 1
Citle.	prince of harmolf
Where one is questioned,	another who holds by
	e Evidence p. 66, c. 41
Under the Crown, need	
from the Crown	
Traverse. See Plea.	p. 237, c. 43
What may be traversed	
Treason. Vide India	
Circumstantial Evidence i	
Two Witnesses therein, or	
	20, 21, and 26, 27 c. 42
One Witness sufficient the	
(Coke's Opinion contra	
Witnesses for the Prisoner	
Oath, by 7 W. 3. c. 3	p. 26, c. 40
Accomplices not indicted	may be Witnetles in
Treason p.	32, c. 65, and 48, c. 24
Trespals. See Abate	ment, Continuando,
Day, Declaration,	De infucia ina bio-
pzia, Entry, Enqu	icy, Evidence, Iffue,
Shilling J	Rot

Bot guilty, Povel Affignment, Son Acfault, Son Frank-tenement. The Evidence shall be only of the Value and not Page 226, Cafe to on the Title Crefpaffer. Is Evidence against his Fellow Trover and Conversion. See Abatement. Conversion, Demand, Denial, Declaration, Plea, Sale in Market Dvert. The Conversion is the Point of the Action p. 146, Declaration of a Trover here, and Proof of a Conversion in Ireland, is good p. 145, c. 7 Truffee. See Answer. When he may, and when he may not be a Witnefs p. 59, c. 21, 63, c. 30, 31 For Life to be produced to Reversioners p. 9, 10, Epthes. Vide Prohibition. Parson, &c. suing for Tithes, must prove himself Incumbent, &c. p. 128, c. 98, and 129, c. 99 But he need not do fo where he was feveral Years in Possession, unless Defendant shews why it ought to be proved p. 129, c. 98, and 129, If Defendant in the Spiritual Court in a Suit for Tithes, traverse that the Plaintiff had read the 39 Articles, he (the Defendant) must prove it, tho' a Negative p 129, c. 99, Sed contra in Ejectment p. 129, c. 99 What Proof the Plaintiff must make, in Case of Substraction of Tithes, and what not p. 129, 130, C. 100 What the Defendant in fuch Case must prove adent consequention of the p. 130; c. 100

Not guilte, Money American, Son A
Gendoz. Vide Information, Statute. Is a good Witness in Information on 13 & 14 C. 2. c. 15. Page 49, Case 27
Is Evidence against any claiming under the Per- fon against whom it was given, not against others p. 95, c. 22, 23, and 112, c. 62
The Conversion state Point of the Addon p. 148
Masse. Vide Mul Masse. Ulife. Vide Indiament. Is not bound to reveal her Husband's Treason
p. 55, c. 11 Is an Evidence against her Husband in an Indict- ment on 3 H. 7. c. 2. Whether she may be a Witness against her Husband p. 55, c. 10, 11, and 58, c. 16, and 57,
Is an Evidence to prove the Defendant committed Adultery with her felf on an Indictment p.55, c. 12
Tenant for Life, to be produced to Reversioner by Husband, or to be presumed dead p. 9,
Will. See Abatement, Executoz, Legatee & Probate.
What is one p. 93, c. 18 That gives the Remainder, after the Estate-tail is spent to maintain the Poor of a Parish, may
be proved by any of the Parish p. 71, c. 53 Mitnels. Vide Attainder, Burning in the Band, Delivery, Evidence, Dutlaw, Daths, Testis.

Are to tell the Truth as to what they have heard

or seen, not what they b	
Cannot give Evidence of wha	t he heard another
à o fay both or desperation the	
Acts and Words of others, ad	
against a Prisoner. Q.	
May be examined apart, fo	that one may not
hear what the other fays	
To be on Oath in all criminal	
rrance q and you himis-	
The fame Process against the	
Crown for Prisoners as again	
Being ferved with a Subpana,	
able Charges, if they do n	
feit 10 L and fuch Damages	
award	p. 28, 29, c. 44
If Subpana'd, may have aWrit of	Privilege p.29,c.46
An Approver or an Accomplice	, may be a Witness
till indicted	p. 51, c. 2
How far to be Credited, that	fwears to procure
his Liberty	p. 51, c. 3
Parson no Witness to prove th	e Bounds of a Pa-
	p. 51, c. 4
Quære of a Parishioner	p. 51, c. 4
If arrested, may be discharged	
Whether and when they may b	
terrogatories	p. 284, c. 32
Whether and when on Indictm	FEIGURIAN SEE
Shall not be examin'd whether	
for forcible Entry	
May be asked whether any Si	
and either of the Parties to	
The most Worthy, if in equal	Number, is to be
credited bear factorial but	p. 34, c. 71
Alledging Contradiction is n	ot to be believed
अध्यक्ष के देवादिकार विकास कि	
gaQ	Alledg-

Alledging their own Guilt or Innocence, are not
to be allowed Page 51, Cafe 2, and 34, 74
He who for his Infamy cannot be a Juror cannot
be one p. 35, c. 36, 37, 5, and 37, c. 6
Whether one Convict of Barretry may be p.37,c.6
Whether one whipped for petty Larceny may
8.2,88.4 exertined apart, for that one may not
One burnt in the Hand, and pardoned, may
102 1 00 tr 496 1 tanimp. 42, c. 13, and 38, c. 9
A Popish Recusant Convict may not p. 39, c. 11
A Person Outlawed may not p. 48, c. 23
One attainted of Felony may not p. 39, c. 11,
Lachen b toffist been annoque, a do w and 48, c. 23
One burnt in the Hand for Felony and pardon'd,
after having been in the Pillory for stealing
Any One, who is not convicted of any Crime, and
who is not disqualified and objected to, may
be one p. 49, c. 24, and 16, c. 3
Whence the Word is derived p. 16, c. 1 Are fworn to tell the Truth p. 16, c. 4
When show and most not p. 10, c. 4
When they may and may not give Evidence,
which tends to their own Advantage p. 51, c. 1,
and 61, c. 23
Whether one in the Simul cum may p. 63, c. 29
Of a publick Notary of Things done beyond Sea,
good 8g . 86 4 4 1 1 2 1 2 1 2 1 2 1 2 1 2 1 2 1 2 1
Court to grant the Prisoner Process to bring in
his Witnesses p. 16, c. 2
Yet denied they had such Power as ad son ibid.
Is not to be Cross-examined till he has gone thro'
his Evidence for the Party box p. 16, c. 3
Members of the House of Commons, who are
Profecutors, may be fo
Contra of any of Grand Jury who found the Bill ibid.
There is not Scintilla juris against two Witnesses
(in Treason, &c.) p. 25, 26, c. 39
egball A Cone

The state of the s
One Indicted for the same Crime cannot be a
Witness Page 32, Case 61
Contra if acquitted thereof p. 32, c. 64
Prisoner may bring Evidence to prove the Wit-
ness swore contrary before Justice of Peace
p. 32, c. 62
Cannot be aspersed without Proof p. 35, c. 1
Nor fuch Proof allowed without Record or Con-
viction p. 35, c. 2
Cannot swear he was suborned and perjured
P. 35, C. 3
Verdict of Conviction of Perjury, voided by
the Death of the Protector, no Evidence a-
gainst the Testimony of a Witness p. 43, c. 17
Though put into the Declaration with a Simul
cum, if nothing is proved against them, may
be fworn p. 63, c. 27, 28
He who might also have brought the Action may
be a Witness if brought by another p. 75,
c. 62
Tilozos.
Acts and Speeches of others admitted as Evi-
dence against a Prisoner; Sed Q, de ceo p. 278,
C. 12
Other Words, besides those laid in the Indictment,
admitted to be proved p. 22, c. 29
No Evidence can be given of what an Accomplice
faid, if not in the fame Indictment p.32, c.61
Witt. Vide Affumpfit.
Must be produced, if the Plaintiff to prove a
Consideration must prove an Arrest p. 178,
c. 58
Of an Enquiry in Trespass the Plaintiff must
prove the Value of the Goods p. 238, c. 45,
and 239, c. 46
Whit of Inquiry. Vide Inquiry.

FINIS.

